



SIMWOOD
STRAIGHT-TALKING, FORWARD-THINKING, TELECOMS

Simwood LLC, 5016 Spedale Ct, Ste. 306, Spring Hill, TN 37174
www.simwood.com
Tel: +1 8338572360 Service: +1 8338572361 Fax: +1 8338572362
team@simwood.com

Terms of Service Agreement

The following provisions are incorporated into the contract or agreement between the "Customer" (the person named on the Account) and Simwood LLC:

1. Application of Terms

These Terms of Service may be updated from time to time in Company's sole discretion; the current version may be found at <https://simwood.com/USA/terms-of-service>. Customer's continued use of the services following such updates constitutes Customer's acceptance of the same.

2. Customer Responsibilities.

- a. The term "Customer" includes Customer, its employees, subcontractors, and independent contractors.
- b. Customer agrees that Customer is purchasing the products and services for Customer's internal use only. Customer understands that it is barred and shall not resell, transfer or make any changes to the products or services without advance written permission of Company. Customer may not attempt any technological measures to utilize or control access to the service.
- c. Customer shall be responsible for any damages caused by Customer, its employees or agents to any products, services, or to Company's network.
- d. Customer agrees to provide Company or its agents with the appropriate personnel for assistance or decision-making as required by Company or its agents to perform tasks or provide services as outlined herein.
- e. Customer is responsible for Customer's account credentials secret and for securing Customer's network and equipment and that such credentials are sufficiently secure in accordance with prevailing industry best practice. Customer is liable for services and service requests which originate or appear to originate from Customer's network or directly from Customer, and Customer is liable for services and service requests which are presented with Customer's identifying data (including, but not limited to, Customer's username and password), irrespective of whether or not they were generated or authorized by Customer or Customer's users.

3. Service Limitations. In addition to other limitations and conditions set forth in this Agreement, the following service and support limitations apply:



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- a. Cost of software, network upgrades and associated services are outside the scope of this agreement. Company or its affiliates or agents will provide consultative specification, sourcing guidance and/or time and material based or individual project offerings upon request and agreement by Company to provide same.
- b. Except as otherwise stated in a written agreement, all service and software upgrades are outside the scope of this agreement and will require a mutually agreed amendment.
- c. Manufacturer warranties for services and software are outside the scope of this agreement.
- d. Periodic reboots for such devices as firewalls, routers, and servers are required to apply/activate critical update patches and configuration changes. Company support services within this agreement are predicated upon the Customer's support and commitment to providing time/scheduling for network device reboots with Customer.
- e. Application software support is limited to any manufacturer's products listed in the agreement.
- f. Restoration of lost data caused by systems/hardware failure is outside the scope of this agreement, unless otherwise stated herein. Company bears no responsibility for data loss resulting from ordinary or emergency maintenance of its services, software, or hardware.
- g. Support services may be contingent on Customer's permission for Company or its agents to have secure remote access to Customer's network (or other solution expressly approved by Company or its agents). Depending on the remote access solution used, additional charges may apply.
- h. Support services required or requested outside the scope of this Agreement may not be exchanged for other services within this agreement. Services outside the scope of this Agreement may be available, and will be provided on either a time-and-material basis, or individual project basis.
- i. Customer does not own any phone numbers or other identifiers that the Company allocates as part of any services or products. Company will use reasonable efforts to avoid changing Customer's phone numbers and other identifiers, and Company will give Customer such notice as is possible and reasonable in the circumstances if Company will do so. Company is not responsible for any costs or losses suffered by Customer resulting from such changes.



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- j. The nature of the Simwood service is such that it may not connect calls to 911 in the same manner as a traditional telephony service. The Customer is advised to check the current Federal Communications Commissions guidance at <https://www.fcc.gov/consumers/guides/voip-and-911-service> and take appropriate alternative steps to assure Customer's access to 911.

4. Ancillary Service Limitations.

- a. Caller name identification (Caller ID) is based on availability of such service from Company's underlying providers. Customer acknowledges that such services are not available for all numbers in all serving areas.
- b. Customer acknowledges that each voicemail message and call recording recorded by Company shall be retained for a minimum of three 3 months from the date the message was recorded. Company reserves their right to purge all voicemail messages after this minimum retention period.

5. Use of Services.

- a. Customer represents that all users will use the services and software in a manner consistent with all applicable laws. Any action or deviation from applicable law or that in Company's determination compromises or threatens the security of Company's business, its vendors, its other Customers or the services and software, whether directly or indirectly, is strictly prohibited and permits Company to suspend or terminate the services without prior notice, at the sole discretion of Company. Furthermore, any direct or indirect violation of applicable laws and in the sole discretion of Company, based upon knowledge, information and belief, may cause Company to withhold and not accept any messages or content that Company reasonably believes contains inappropriate content or that is, or which could reasonably become the subject of any legal, regulatory, or other governmental proceeding or process, including a law enforcement proceeding, process or inquiry.
- b. Company's services and software, are designed for normal commercial or residential use and are not intended for usage by organizations such as call centers, fax messaging services, telemarketing firms, or resellers or for use without live dialog, such as use by transcription services, intercom or monitoring services, etc. Unauthorized or excessive use beyond that normally experienced by typical, similarly situated business and residential customers may cause network capacity and congestion issues and interfere with distribution of network services and the third-party networks (if applicable) with which Company connects for call initiation and completion services. Such unauthorized or excessive use or any other use of the services and software, beyond that of the typical business or residential



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customer or any action which causes a disruption in the network integrity of Company, or its vendors, whether directly or indirectly, is strictly prohibited and constitutes a material breach for which Simwood may immediately terminate services. Following are examples, and not a comprehensive list, of impermissible uses which are not normal use:

- i. Resale to others;
- ii. Auto-dialing or fax/voice blasts;
- iii. Without the intent of engaging in live dialog, including use as a monitor or for transcription purposes;
- iv. Continuous or extensive call forwarding;
- v. Continuous connectivity;
- vi. Constant dialing;
- vii. Iterative dialing;
- viii. Telemarketing practices that are in violation of any law or regulation;
- ix. Any service requiring compliance with the federal Health Insurance Portability and Accountability Act ("HIPAA"), requiring secure storage of "protected health information" as defined under HIPAA, requiring a "Business Associate Agreement," or requiring Companies to be a "Business Associate or subcontractor of pursuant to HIPAA;
- x. Any service for which storage of or control of access to sensitive data, such as information about children or medical or health information;
- xi. Any service involving high-risk activities where the interruption or malfunction of the services could lead to serious consequences, including but not limited to personal injury, death, or environmental damage, such as in management of nuclear facilities, air traffic control, life or health support; and
- xii. Any other activity that would be inconsistent with small business or residential usage.

Customer may not use Company's services and software in any way that is illegal, improper, or inappropriate, such as uses which are threatening, abusive, harassing, defamatory, libelous, deceptive, or invasive of another's privacy. Customer acknowledges that this Agreement is accepted on behalf of all persons who use the products and/or service(s) and that Customer shall have sole responsibility for ensuring that all users understand and comply with the terms and conditions of this Agreement and any applicable Company policies including, but not limited to, acceptable use and privacy policies. Customer further acknowledges and agree that Customer shall be solely responsible for any transactions, including, without limitation, purchases made through or in connection with the service(s).

Simwood shall be the sole arbiter of what is considered improper, inappropriate, or normal commercial or residential use pursuant to this clause.



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6. Pricing and Term

- a. Company's standard pricing for Customers is available at <https://simwood.com/usa/pricing-plans/> or such other addresses as advised by Company from time to time. Such pricing may be updated from time to time in Company's sole discretion. Company will provide Customer 30-days prior notice of a pricing update. If the Customer reasonably believes the pricing update has or is likely to have a material adverse impact on Customer and wishes to object to the update, Customer must notify Company within 5 business days of Company's notice. Customer's objection must explain the material adverse impact and be accompanied by all relevant supporting documentation. Following receipt of such objection, Company shall promptly review the objection. After this review, Company may, in its sole discretion, grant the objection and not update the price for Customer. If Company does not grant the objection, it will notify Customer of its decision and the change will go into effect on the 30th day following the original notice. Customer's continued use of the services following such update constitutes Customer's acceptance of the same. If Customer does not agree to the terms of any pricing update, Customer may terminate the Agreement prior to the effective date of the update.
- b. Unless otherwise specified in writing between the parties, the services shall continue from the date you first ordered the service (which may differ from the date on which you receive any hardware) for a term of 1 month and renew at the end of each 1-month term for a subsequent term of one month until this Agreement is terminated by you or Simwood. Any such termination by you shall come into effect at the end of any term currently in effect.
- c. All charges due by you to Simwood under this agreement shall be debited from your payment method on file and you agree to maintain a valid form of payment on file with us for this purpose; Simwood reserve the right to automatically re-attempt any transaction that is declined until payment is either received, or Simwood exercises its rights herein with respect to non-payment.
- d. Any calling credit which you purchase, unless otherwise agreed by us in writing, shall be valid for a period of 12 months from the date of purchase, after which any unused credit shall expire without notice to you.
- e. In the event any charges owed by you are not received within seven calendar days of the due date, we may (i) suspend the services (ii) charge you interest on the overdue amount at a rate of four percentage points over the federal reserve prime rate or four percent (whichever is the higher) per annum.
- f. In the event that any charges owed by you are not received within thirty calendar days of the due date, we may terminate this agreement. If we terminate your



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agreement for nonpayment, you shall not be relieved of your payment obligations in relation to your use of the services prior to the termination nor shall you be entitled to any refund of any prepaid calling credit.

- g. Simwood may suspend the service if, in its sole opinion, Simwood has cause to suspect that you may be (or are at imminent risk of being) insolvent, bankrupt, unable to pay your debts, subject to proceedings in relation to your debts or other similar situation which may lead you to be unable to pay the charges owed to Simwood.
- h. Simwood may terminate this agreement for any reason upon thirty (30) calendar days' notice to you.

7. Confidentiality. This Confidentiality portion of this Agreement is in addition to other terms and conditions set forth in any and all contracts currently existing or hereafter created between Customer and Company. This agreement shall under no circumstances be deemed to alter any such contract except as specifically provided below.

- a. Both parties acknowledge that, in the course of providing services and software, they each may learn from the other certain non-public and otherwise confidential information. Both parties shall regard any and all information received, which in any way relates or pertains to personal or business information, including information concerning customers, consumers or employees, as confidential. Both parties agree that such confidential information remains the property of the originating party.
- b. Both parties shall take commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose other than purposes which serve this Agreement or as expressly and specifically permitted in writing by the other party or as required by applicable law.
- c. This provision shall survive termination of this Agreement and any other agreements between Customer and Company.

8. Indemnification. INDEMNIFICATION AND LIABILITY OF CUSTOMER AGREES THAT CUSTOMER SHALL BE RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY AND THEIR EMPLOYEES, AFFILIATES, SUPPLIERS, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS AND BUSINESS PARTNERS AND SHALL REIMBURSE COMPANIES FOR ANY DAMAGES, LOSSES OR EXPENSES, PENALTIES, GOVERNMENT FORFEITURES, GOVERNMENT FINES OF ANY KIND INCLUDING WITHOUT



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LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS, INTEREST, PENALTIES, EXPERT WITNESS FEES AND EXPENSES, AND ALL COSTS OF INVESTIGATION WHICH MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED BY A THIRD PARTY IN CONNECTION WITH ANY CLAIMS, SUITS, JUDGMENTS, AND CAUSES OF ACTION ARISING OUT OF (a) CUSTOMER'S USE OF THE SERVICE(S) OR PRODUCT(S); (b) VIOLATION OR INFRINGEMENT OF CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS ARISING FROM CUSTOMER'S USE OF THE SERVICE(S) OR ANY UNAUTHORIZED APPARATUS OR SYSTEM; (c) ANY CLAIMS OR DAMAGES ARISING OUT OF THE LACK OF 911/E911 OR DIALING ASSOCIATED WITH A HOME SECURITY, HOME DETENTION, OR MEDICAL MONITORING SYSTEM; (d) OR IN CONNECTION WITH, THE TRANSMISSION BY OR THROUGH THE IAS OF ANY CONTENT, INCLUDING ANY BREACH OF USER'S SECURITY ON THE IAS, OTHER THAN THOSE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF COMPANY, OR ITS EMPLOYEES; AND (e) CUSTOMER'S BREACH OF ANY PROVISION OF CUSTOMER'S AGREEMENT WITH COMPANY.

9. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by and construed under the laws of the State of Tennessee, without regard to conflict of laws principles. All suits, proceedings and other actions relating to, arising out of or in connection with this Agreement, whether founded in contract or tort, shall be submitted to the *in personam* jurisdiction of the courts of the State of Tennessee and the exclusive venue for all such suits, proceedings and other actions shall be in Williamson County, Tennessee. Each party hereby waives any claim against or objection to *in personam* jurisdiction and venue of such courts. Either party shall have the right to seek specific performance of the provisions of this Agreement without the requirement to post a bond or other monetary obligation.

Prior to bringing any suit or proceedings pursuant to this clause, the parties may mutually agree in writing to submit to a form of binding arbitration or alternative dispute resolution, of a form the parties shall agree prior to entering into such. In doing so, the parties shall bare their own costs. Nothing in this sub-paragraph shall require a party to submit to such arbitration or alternative dispute resolution prior to filing a suit or brining proceedings or other actions pursuant to the foregoing.

10. **Attorneys' Fees:** If any action at law or in equity is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees, costs of suit and expenses in addition to any other relief to which such prevailing party may be entitled.



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11. **Severability.** If any provision of this Agreement should be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, and the balance of this Agreement shall be interpreted as if such provision were so excluded.
12. **Force Majeure.** If either party's performance of any of its obligations under this Agreement is interfered with by any reason or any circumstances beyond its control, including, without limitation, fire, explosion, power failure or power surge, acts of God, war, revolution, civil commotion, or requirement of any government or legal body or any representative of any such government or legal body, non-performance of any obligation of a third party contractor, labor unrest, including without limitation, strikes, slowdowns, picketing, boycotts, failures of bandwidth providers, or failures of video programming providers, then that party shall be fully excused from performance on a day-by-day basis to the extent of such interference, and that party shall have no liability nor be in default for any interruption in service.
13. **Waiver.** The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right.
14. **Assignment.** This Agreement may not be assigned by Customer without the prior written consent of Company. Company may assign this Agreement without Customer's consent, and without notification.
15. **Independent Contractors.** This Agreement does not create any agency, partnership, joint venture, or franchise relationship. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
16. **Technical and Administrative Support.** During the term of this Agreement, Company shall provide technical and administrative support on an as-is, as available basis via telephone to Customer during the hours indicated at <https://simwood.com/usa/support/> reserves the right to adjust and/ or reduce these hours at its sole discretion at any time without prior notice to Customer. The technical support telephone number is 833-857-3277. In order to receive such support, Customer will submit service request tickets into Company's online ticketing system. Service request tickets will be assigned to a Company technician. Company will make a reasonable attempt to respond to all service requests within 4 working hours. The technical support provided by Company applies strictly and specifically to the products and services provided by Company. If Customer requests for technical support exceeds that of similarly situated customers or is outside the scope of our free



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technical support, Company reserves the right to deny service related to such request. Company is not responsible for the functionality of the Customer's equipment or devices or the infrastructure of any Property where services are provided, including, but not limited to, wiring, wall plates, and patch panels that were installed and/or maintained by Customers or a third party, including the owner of the Property, and will not provide technical support related solely to Customer's equipment or devices. Furthermore, Customer agrees to treat Company support personnel with normal courtesy and respect in all interactions and acknowledges that repeated episodes (i.e., more than one) of disrespectful, abusive, argumentative, disruptive or similar behaviors directed towards Company support personnel, in the sole discretion and judgment of Company, will result in the termination of support services to Customer. Under these circumstances, if Company restricts or terminates support services to Customer, Customer acknowledges and agrees that no credits, refunds, or discounts will be provided to Customer as a result of these actions and all other terms and conditions of this Agreement remain in full force and effect. Further information regarding support services is available at simwood.com.

14. **Representations and Warranties of Customer:** Customer represents, warrants and agrees that:
- a. Customer has full power and authority to enter into this Agreement and to meet the terms and conditions of this Agreement, to grant the licenses provided in this agreement, and the person signing this Agreement on behalf of Customer is authorized to bind Customer.
 - b. Customer is under no obligation, contractual or otherwise, to grant, and has not granted, to any third party the right to provide the services at the Property or any other rights that would prevent Customer from performing its obligations under this Agreement
15. **CALEA.** Pursuant to the Communications Assistance for Law Enforcement Act (CALEA) (47 U.S.C. §§1001-1010) Company will provide assistance to all local, state and/or federal authorities who provide the company with a Summons and Court Order or a Subpoena. All requests are evaluated and reviewed on a case by case basis in light of any special procedural or legal requirements and applicable laws. For example, `ul demands involving child exploitation, Company will prioritize those demands and make the information available to the National Center for Missing and Exploited Children as required by 18 U.S.C. § 2258A.
16. **Protection of Information and Marks.** All service(s) information, documents, and materials on our websites are protected by trademark, copyright or other intellectual property laws, and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "marks") of Company are and shall remain the exclusive property of Company. Nothing in this



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Agreement shall grant Customer the right or license to use any of the marks. Company performs an annual review of its copyright policy and updates are regularly distributed to management and those designated individuals responsible for compliance and reporting. All complaints are routed to the designated agent for review and, if necessary, Company has several outside legal experts consisting of practicing attorneys specializing in patent, trademark and copyright law for consultation purposes.

17. **Export Laws.** Customer expressly agrees to comply with all applicable export and re-export laws, including, but not limited to, the Export Administration Act, the Arms Export Control Act, and their implementing regulations. Customer further expressly agrees not to use the service(s) in any way that violates any provision of such laws or their implementing regulations.

18. **Retention of Rights.** Nothing contained in this Agreement shall be construed to limit Company's rights and remedies available at law or in equity. Upon termination of this Agreement for any reason, Company and its suppliers reserve the right to delete all Customer's data, files, electronic messages or other Customer information that is stored on Company's or its suppliers' servers or systems. In addition, Customer may forfeit its account user name and all email, IP and Web space addresses, and voice mail. In the event Customer cancels without porting its voice service and the associated telephone number(s) to another service provider, Customer will forfeit the telephone number. Company shall have no liability whatsoever as the result of the loss of any such data, names, addresses, or numbers.

Version: 1.1

Date: 19th May 2022