Data Processing Agreement

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1.   Introduction

1.1.   References in this Data Processing Agreement to a Regulation are to EU regulation 2016/679/EC. References to an Article are to an Article of the Regulation. Capitalised terms in this Data Processing Agreement have the meaning defined by the Regulation or the MSA (as applicable).

1.2.   "Data Protection Laws and Regulations" means all national and local laws, regulations and rules by any government, agency or authority applicable to the Processing of Personal Data under this Data Processing Agreement, including the Regulation. In the event of any inconsistency between the Data Protection Laws and Regulations, the strictest provision shall prevail.

1.3.   Each Party shall comply with its obligations under Data Protection Laws and Regulations.

2.   Data Processing Terms

2.1.   If, in respect of any Personal Data, either Party is a Controller, and the other Party Processes the Personal Data as their Processor, this clause 2 shall apply in respect of such Processing.

2.2.   Where Simwood is a Data Processor of the Company, Simwood's processing is described in Annex 1.

2.3.   The Processor shall:

2.3.1.   Process Personal Data in accordance with Data Protection Laws and Regulations;

2.3.2.   Process the Personal Data only on documented instructions from the Controller;

2.3.3.   unless prohibited by law, notify the Data Controller:

(a)   before Processing the Personal Data, if the Processor is required by any law of the European Union or the law of one of the Member States of the European Union to act other than in accordance with the instructions of the Controller; or

(b)   immediately if, in the Processor's opinion, any of the Controller's instructions under paragraph 2.3.2 infringes the Regulation or other Union or Member State data protection provisions;

2.3.4.   be authorised generally to appoint sub-processors. The Processor shall inform the Controller of any intended changes concerning the addition or replacement of sub-processors and shall respect the conditions referred to in paragraph 4 of Article 28 for any such engagement. Subject to clause 13 of the MSA, the Processor shall be liable for the acts and omissions of its sub-processors, and the Processor shall ensure that the sub-processor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in this clause 2.3;

2.3.5.   ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality. For the purposes of the MSA, the Personal Data shall be "Confidential Information";

2.3.6.   take all measures required pursuant to Article 32;

2.3.7.   taking into account the nature of the Processing, assist the Controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the Regulation;

2.3.8.   provide reasonable assistance to the Controller on written request by the Controller in ensuring compliance with the Controller's obligations pursuant to Articles 32 to 36, taking into account the nature of Processing and the information available to the Processor;

2.3.9.   at the Controller's choice, delete or return all the Personal Data to the Controller after the end of the provision of the Services relating to the Processing, and delete existing copies unless Union or Member State law requires storage of the Personal Data. Where the Processor cannot delete the Personal Data due to technical reasons, the Processor shall notify the Controller and take all steps to fully and effectively anonymise any Personal Data remaining to the fullest extent possible, and shall ensure any Personal data which is not deleted or effectively anonymised is made unavailable for further processing except to the extent required by law;

2.3.10. at Processor's cost and following written agreement as to the details:

   (a)   make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in Article 28; and

   (b)   allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller;

2.3.11. notify the Controller without undue delay if the Processor becomes aware of a Personal Data Breach.

2.4.   The Processor shall not transfer, publish, disclose, divulge or otherwise permit access to Personal Data by recipients (including sub-processors) in jurisdictions outside of the European Economic Area unless the Controller ensures that any such transfer is at all times in compliance with the Regulation.

2.5.   Any actions which Simwood performs under this Data Processing Agreement on request of Company shall be at Company's cost.

3.   "Brexit" Handling

Controller-processor

3.1.   If:

   3.1.1. the Company is acting as a Controller and Simwood acts as the Company's Processor; and

   3.1.2. the United Kingdom is or becomes a "third country" for the purpose of Chapter V of the Regulation

   unless and until such time as the European Commission has decided that the United Kingdom ensures an adequate level of protection for the purposes of Chapter V of the Regulation, Simwood and the Company shall, in respect of any transfer of Personal Data subject to Chapter V of the Regulation which is not subject to any of the permitted derogations set out in that Chapter V, enter automatically into the standard contractual clauses for the transfer of personal data to processors established in third countries (controller to processor transfers) approved by the European Commission by Commission Decision 2010/87/EU, currently available at https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087.

3.2.   For the purposes of those clauses, Simwood shall be the "data importer" and the Company shall be the "data exporter".

Controller-controller

3.3.   If:

3.3.1. Simwood or the Company transfers Personal Data to the other, where each party acts as a Controller; and

3.3.2. the United Kingdom is or becomes a "third country" for the purpose of Chapter V of the Regulation

unless and until such time as the European Commission has decided that the United Kingdom ensures an adequate level of protection for the purposes of Chapter V of the Regulation, Simwood and the Company shall, in respect of any transfer of Personal Data subject to Chapter V of the Regulation which is not subject to any of the permitted derogations set out in that Chapter V, enter automatically into the standard contract clauses for the transfer of personal data from the Community to third countries (controller to controller transfers) annexed to the European Commission Decision 2004/915/EC (Set II), currently available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004D0915.

3.4.   For the purposes of those clauses, Simwood shall be the "data importer" and the Company shall be the "data exporter", and the parties elect option (iii) (the data processing principles set forth in Annex A) for the purpose of clause II(h).

Data Processing Schedule

1. Categories of Data

Personal data (if any):

- provided by the Company in the "tag" function attributable to a call or in a SIP trunk name; and
- contained in an SMS transmission processed by Simwood on behalf of the Company.
- contained in a fax transmission processed by Simwood on behalf of the Company.

2. Categories of Data Subjects

As determined by the Company, and which may include:

- Employees of the Company, their agents, contractors
- End Users of Services
- End Users of other communications providers

3. Permitted Purposes

To make the data available to the Company or otherwise provide the relevant Services to the Company.

4. Duration

In the case of a tag function or SIP trunk name, for as long as the Company keeps the data stored in the fields in question.

In the case of a fax transmission, until up to 48 hours after the transmission has been passed to the Company or, in the case of storage in log files created at the request of the Company, for as long as the Company wants Simwood to retain those logs.

In the case of an SMS transmission, until the transmission has been passed to the Company or, in the case of storage in log files created at the request of the Company, for as long as the Company wants Simwood to retain those logs.

Annex 1

1. Categories of Data

Personal Data provided by the Company for processing e.g. in the "tag" function attributable to a call, or for messaging or facsimile transmission.

2. Categories of Data Subjects

As determined by the Company, and which may include:

- Employees of the Company, their agents, contractors
- End Users of Services
- End Users of other communications providers

3. Permitted Purposes

To make the data available to the Company

4. Duration

The duration of the period for which the Company keeps the data stored in the fields or services in question.

Document History

Version	Date	Author	Notes
1.2	2019-11-12	NB/RM	Added clauses in the event of "Brexit"
1.1	2019-08-01	NB/RM	Updated
1.0	2018-05-22	NB	Initial Release

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