

1. Definitions

- 1.1 "Simplicity" means Simplicity Limited, its successors and assigns or any person acting on behalf of and with the authority of Simplicity Limited.
- 1.2 "Client" means the person/s requesting Simplicity to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 "Services" means all Products (which includes any files, information, printed or virtual material, data or software) or Services (which includes any advice or recommendations, technical service and support and training, etc.) supplied by Simplicity to the Client at the Client's request from time to time (where the context so permits the terms 'Products' or 'Services' shall be interchangeable for the other).
- 1.4 "Web Site" means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.
- 1.5 "Prohibited Content" means any content on any advertising media that:
 - (a) is, or could reasonably be considered to be, in breach of the Broadcasting Act 1989; the Fair Trading Act 1986; or any other applicable law or applicable industry code; or
 - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - (c) is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights (including, but not limited to, the distribution of music files or any other material in which the Client does not own the copyright).
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this agreement, either party's Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details.
- 1.7 "Price" shall mean the cost payable (plus any Goods and Services Tax (GST) where applicable) for the Services as agreed between Simplicity and the Client subject to clause 4 of this contract.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by Simplicity.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Simplicity.
- 2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Simplicity's Web Site. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.4 None of Simplicity's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Simplicity in writing nor is Simplicity bound by any such unauthorised statements.
- 2.5 Once accepted by the Client, Simplicity's quotation shall be deemed to interpret correctly the Client's instructions, whether written or verbal. Where verbal instructions only are received from the Client, Simplicity shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 2.6 Any advice, recommendations, information, assistance or service provided by Simplicity in relation to Services provided is given in good faith, is based on information provided to Simplicity, and Simplicity's own knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and Simplicity shall make all effort to offer the best solution to the Client.
- 2.7 The Services supplied under this agreement do not include, unless otherwise specified in writing by Simplicity:
 - (a) travel and accommodation required to provide authorised on-site Services;
 - (b) courier and freight charges;
 - (c) products and services supplied by a third party. Where the provision of Services requires Simplicity to obtain products and/or services from a third party, the agreement between Simplicity and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Simplicity, and the Client shall be liable for the cost in full including Simplicity's margin of such products and/or services. Simplicity shall not be held liable for any loss, damage or costs associated with any delay, fault or defect relating to the supply of products or services from that third party;
 - (d) support of other software, accessories, attachments, machines, hardware, peripherals, systems or other devices not supplied by Simplicity;
 - (e) rectification of lost or corrupted data arising from any reason other than the negligence, fault or omission of Simplicity;
 - (f) support which is rendered more difficult because of any changes, alternation, addition, modifications or variations to the Services, the operating system or the operating environment;
 - (g) attendance to faults caused by using the Products;
 - (h) diagnosis or rectification of problems not associated with the Products;
 - (i) loss or damage caused directly or indirectly by operator error or omission and over which Simplicity has no control; and
 - (j) any direct costs other than Simplicity's personnel's time and ordinary overheads.
- 2.8 The Client accepts that where the Client declines Simplicity's security and/or upgrade package Services, then Simplicity shall reserve the right to charge for fees involved with remedying any security issues or where there is software incompatibility issues resulting from any upgrade.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Change in Control

- 3.1 The Client shall give Simplicity not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Simplicity as a result of the Client's failure to comply with this clause.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2, the Client agrees that should the Client introduce any third party to Simplicity as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Products, and/or to request

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any variation thereto, on the Client's behalf (such authority to continue until all requested Products have been delivered, or the Client otherwise notifies Simplicity in writing that said person is no longer the Client's duly authorised representative).

- 4.2 In the event that the Client's duly authorised representative, as per clause 4.1, is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Simplicity in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to Simplicity for all additional costs incurred by Simplicity (including Simplicity' profit margin) in providing any Products, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Price and Payment

- 5.1 At Simplicity's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Simplicity to the Client; or
 - (b) Simplicity's estimated Price (subject to clause 5.3) which will be valid for the period stated in the estimate or otherwise for a period of thirty (30) days. The final price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than ten percent (10%) will be subject to Client approval before proceeding with the Services.
- 5.2 A copy of the written estimate is to be signed and dated by the Client to indicate acceptance and should be returned to Simplicity. As an alternative, the Client may send an official order for the Services via email in reply to the estimate which will imply the Client's acceptance of Simplicity's terms and conditions. The Client accepts that no work will be commenced until acceptance has been supplied to Simplicity as per this clause.
- 5.3 *Additional and/or Varied Services:*
- (a) Simplicity agrees that there will be no charge in the preparation of the initial estimate, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at Simplicity's sole discretion) where a complex detailed analysis is required. In the event the Client requires detailed reports, mock-ups or similar, this shall be invoiced at Simplicity's hourly rate unless specified otherwise in the initial estimate, therefore, this variation shall be detailed on the invoice as per sub-clause (i).
 - (b) Simplicity shall attend a post implementation meeting, however if on-going support is required, then an additional cost may be involved for these Services.
 - (c) All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.
 - (d) Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice.
 - (e) Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at the Client's request for the job.
 - (f) Where the Client has supplied graphics for use within the provision of Services, and such graphics require additional manipulation to convert them to a usable format, Simplicity shall reserve the right to charge for the additional time involved.
 - (g) Where the performance of any contract with the Client requires Simplicity to obtain products and/or services from a third party, the contract between Simplicity and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Simplicity, and the Client shall be liable for the cost in full including Simplicity's margin of such products and/or services.
 - (h) Whilst every effort will be taken by Simplicity to match virtual colours with physical colours, Simplicity will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product. Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra and charged contra against final invoice.
 - (i) Simplicity reserves the right to amend the Price where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of Simplicity's standard hourly rates (and double such rate for any Services provided outside Simplicity's normal business hours) or in the event of increases to Simplicity in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) will be charged for on the basis of Simplicity's estimate and will be shown as variations on the invoice.
 - (j) The Client shall be required to respond to any variation submitted by Simplicity within ten (10) working days. Failure to do so will entitle Simplicity to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion.
 - (k) Upgrading any components within the Web Site to original specifications, may incur additional costs.
 - (l) The Client acknowledges that all services and support for email are chargeable in addition to the Price.
- 5.4 At Simplicity's sole discretion a non-refundable deposit may be required and shall become immediately due and payable on acceptance (as per clause 5.2 and prior to commencement of the Services).
- 5.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by Simplicity, which may be:
- (a) prior to the Web Site going live;
 - (b) on completion of the Services;
 - (c) before commencement of the Services;
 - (d) by way of instalments/progress payments in accordance with Simplicity's payment schedule;
 - (e) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (f) failing any notice to the contrary, the date specified on any invoice or other form as being the date for payment.
- 5.6 If the Client has agreed to a payment plan arrangement in accordance with 5.5(d) and monies due under that arrangement have been receipted by Simplicity, then where non-progression of the Services occurs for an unreasonable amount of time due any action or inaction by the Client, at the sole discretion of Simplicity such monies receipted may become non-refundable where the Client had failed to comply with the cancellation procedures as per clause 23.
- 5.7 Publication and/or release of the work done by Simplicity shall only be released once the funds have been cleared or honoured.
- 5.8 Payment may be made by bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Simplicity.

- 5.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Simplicity nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Simplicity, an amount equal to any GST Simplicity must pay for any provision of Services by Simplicity under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Fixed Contract Term

- 6.1 The Services shall continue for the term stipulated in this agreement and, upon expiration of this term, will continue on a monthly basis, unless terminated in accordance with clause 23.
- 6.2 Subject to clause 23.1, if the Client wishes to terminate the Services during the term stipulated, Simplicity may charge the Client an early termination fee, the amount of which will depend on the Services acquired by the Client and the date of termination.
- 6.3 Simplicity may terminate the Services prior to the expiry of the fixed contract term at any time (without charging an early termination fee) if Simplicity gets the Client's consent to do so, and:
- (a) Simplicity appropriately off-set the effect of the termination on the Client, e.g. credit or rebate; and/or
 - (b) Simplicity migrates the Client to alternative services for the remainder of the fixed contract term.

7. Terms of Use

- 7.1 When the Client uses the Services, the Client must:
- (a) comply with all laws, all directors by a regulator, all notices issued by authorisation of, or under, law (e.g. Copyright Act 1968) and reasonable directions by Simplicity; and
 - (b) keep the Client's account information, password, data and Products confidential and secure. The Client remain responsible for any use or misuse of such; and
 - (c) follow any reasonable instructions provided by Simplicity in relation to the Services; and
 - (d) access and use the Services solely in accordance with these terms and conditions and any reasonable instructions provided by Simplicity; and
 - (e) employ back-up power and surge protectors at the Client's premises; and
 - (f) respond promptly to Simplicity's communications in relation to the Services; and
 - (g) provide accurate and prompt responses to Simplicity's requests for any information or documentation reasonably required by Simplicity to provide the Services.
- 7.2 The Client must not:
- (a) use, or attempt to use, or permit another person to use or attempt to use, the Services:
 - (i) so as to cause offence, to defame, abuse, communicate obscenities, menace or annoy;
 - (ii) for any purpose or activity of an illegal or fraudulent nature in any jurisdiction, including damaging any property or injuring or killing any person, to breach the security of any computer network (hacking), to breach any persons privacy, or to distribute unsolicited software or junk mail;
 - (iii) for advertising purposes without Simplicity's express written consent;
 - (iv) to breach any of the intellectual property rights held by Simplicity or any third party;
 - (v) to transmit, publish or communicate materials which is defamatory, offensive, abusive, indecent, menacing or unwanted;
 - (vi) to expose Simplicity to liability (including any claims for damages);
 - (vii) in any way which damages, interferes with or interrupts the Services, or a supplier's network used to provide the Services;
 - (viii) to intercept or attempt to intercept any communication not otherwise intended for the Client; and
 - (ix) contact Simplicity's suppliers or the wholesale / carrier or third party provider of a service in relation to the Services or service faults. The supplier may impose a fee for doing so and this fee will be passed onto the Client. They may, however, contact the Client in relation to any reported service difficulties in relation to appointment making and service restoration, and for this reason Simplicity will need to provide the Client contact details to such parties.
- 7.3 If, in Simplicity's opinion, the Services are being used by anyone in breach of these terms and conditions (including clause 7) or Internet etiquette, Simplicity may:
- (a) refuse to post such infringing information to public areas;
 - (b) remove, review or edit such infringing information from any computer on Simplicity's network, with the exception of private electronic messages;
 - (c) discontinue any infringing communication;
 - (d) suspend the Services indefinitely, or for a specific period;
 - (e) terminate the Services, and refuse to provide the Services to the Client, or the Client's associates, in the future;
 - (f) inform appropriate government and regulatory authorities of suspected illegal or infringing conduct.
- 7.4 The Client authorise Simplicity to delete without notice or liability any information or materials found on the Products (or equipment controlled by Simplicity) that is found to be of an obscene nature, unauthorised, unlawful, uncollected for an excessive period of time or excessive in volume.

8. Delivery

- 8.1 Delivery ("**Delivery**") of the Products is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Products at Simplicity's address; or
 - (b) Simplicity (or Simplicity's nominated carrier) delivers the Products to the Client's nominated address even if the Client is not present at the address.
- 8.2 At Simplicity's sole discretion the cost of delivery is included in the Price.
- 8.3 Any time specified by Simplicity for delivery of the Products is an estimate only. The Client must take delivery by receipt or collection of the Products whenever they are tendered for delivery. Simplicity will not be liable for any loss or damage incurred by the Client as a result of

delivery being late. In the event that the Client is unable to take delivery of the Products as arranged then Simplicity shall be entitled to charge a reasonable fee for redelivery and/or storage.

- 8.4 Simplicity may deliver the Products/Services in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.5 Any time specified by Simplicity for provision of the Services is an estimate only and Simplicity will not be liable for any loss or damage incurred by the Client as a result of provision being late. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that Simplicity is unable to provide the Services as agreed solely due to any action or inaction of the Client, then Simplicity shall be entitled to:
- (a) charge the Client additionally for re-providing the Services at a later time and date; or
 - (b) subject to clause 23.5, terminate the agreement.

9. Web Site Development

9.1 Simplicity's Responsibilities:

- (a) Upon acceptance of Simplicity's quotation, and in accordance with this agreement, Simplicity will:
 - (i) use its best endeavours to develop the Web Site in accordance with the Client's instructions and specifications; and
 - (ii) to the extent specified in the Client's instructions and specifications, negotiate and procure any third-party agreements on behalf of the Client.
- (b) The Client acknowledges that the development of the Web Site by Simplicity is based upon current technology platforms (e.g. internet browsers, mobile, android, etc.), and therefore Simplicity cannot guarantee that Web Site features and /or content will display correctly, and that the overall visual experience will be the same, for use by either superseded or presently undeveloped technology.

9.2 Client's Responsibilities:

- (a) The Client will, in addition to any other obligations expressed in this agreement, have the following responsibilities:
 - (i) provision of all content (including data, logos, designs and/or graphic and related materials) to be incorporated into the Web Site;
 - (ii) provision of any other information, ideas or suggestions which are to be expressly considered by Simplicity in developing the Web Site.
- (b) The Client will ensure that Simplicity is given such information and assistance (including access to computer systems and other locations to complete a branding project) as Simplicity reasonably requires to enable Simplicity to construct and maintain the Web Site.
- (c) Subject to clause 22.3, the Client shall supply access to any computer system, usernames and passwords required to remove data and/or sites for failure to comply with these terms and conditions.
- (d) It shall be the Client's responsibility to ensure that any specific requirements they may have for mobile web browsers is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the Web Site shall be at the sole discretion of Simplicity. In the event that additional Services are requested, or required (as per clause 9.1(b)), in order to meet any specific requirements for mobile web browsers, after Simplicity has commenced work on the Web Site, shall be treated as a variation to the Charges, and a strict estimation of further work required shall be submitted to the Client for approval before proceeding with the variation work.
- (e) Simplicity will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Web Site which is attributable to:
 - (i) incorrect information provided by the Client, either pursuant to this clause or otherwise; or
 - (ii) failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or
 - (iii) any third-party products and/or services used by Simplicity in creation of the Web Site.

9.3 Proof Reading:

- (a) Whilst every care is taken by Simplicity to carry out the instructions of the Client, it is the Client's responsibility to undertake proof reading and provide feedback (where necessary) via Dropbox which provides regular, possibly daily contact. Simplicity shall be under no liability whatever for any errors not corrected by the Client during the proof reading stages, and:
 - (i) should the Client's alterations require additional proofs this shall be invoiced as an extra;
 - (ii) if, at any stage the Client is unhappy with the direction the Services are taking, the Client can cancel this agreement and pay Simplicity for work completed up to that date of cancellation.
- (b) When style, type or layout is left to Simplicity's judgement and the Client makes further alterations, this will be invoiced as an extra.
- (c) Simplicity will make one (1) set of minor changes at no extra cost within fourteen (14) days of the review period. Minor changes include small text changes and small adjustments to placement of items on the artwork. It does not include changes to images, colour schemes, or any navigation features. Any minor changes need to be notified to Simplicity via email.
- (d) Should the Client fail to notify Simplicity in writing of any amendments within fourteen (14) days from the commencement of the review period, Simplicity shall deem that the original draft as being acceptable.

9.4 Client's Property and Materials:

- (a) Graphic files should be supplied in an editable, vector digital format and photographs in a high resolution digital format. If the Client chooses to purchase stock photographs, Simplicity can suggest stock libraries.
- (b) In the case of property and materials left with Simplicity without specific instructions, Simplicity shall be free to dispose of them at the end of twelve (12) months after their receiving them and to accept and retain the proceeds, if any, to cover their own costs in holding and handling them.
- (c) Where materials or equipment are supplied by the Client, Simplicity accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

9.5 Maintenance:

- (a) Subject to sub-clause (b), Simplicity will provide the Maintenance Services in accordance with the maintenance terms set out in Simplicity's maintenance schedule.
- (b) The Client will procure all necessary authorisations, licences and consents to enable Simplicity to have access to the Web Site in order to provide the Maintenance Services.

10. Hosting Services

- 10.1 "Live Date" means the date in which Simplicity provides the Hosting Services as per initial acceptance of Simplicity's quotation.
- 10.2 Hosting Services shall only be used by the Client for lawful purposes. Any use which violates any applicable national or international laws is strictly prohibited (e.g. posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind – including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability).
- 10.3 Hosting Services exclude domain registrations and SSL Certificates, and where the Client is changing from another hosting provider the install and set-up of the Web Site on Simplicity's web servers, which shall be charged to the Client additionally.
- 10.4 Simplicity will, at its sole cost and expense:
- (a) install the Client's materials on Simplicity's Web Server;
 - (b) host the Web Site on Simplicity's web servers;
 - (c) ensure that from the Live Date:
 - (i) sufficient capacity is maintained on Simplicity's webserver to enable users access to the Web Site in a timely manner;
 - (ii) the Web Site is accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or (where applicable) Maintenance in accordance with clause 10.8);
 - (d) provide the Client with reasonable access to the Web Site to perform maintenance services.
- 10.5 Simplicity will not:
- (a) alter or amend, or permit any person to alter or amend the Web Site without the written consent of the Client unless such alternation or amendment is part of a standard update or upgrade;
 - (b) post or display on the Web Site any advertisement, sponsorship or promotion without the written consent of the Client unless the web solution provided is subscription based (e.g. directory listing) or the Client has a leased web solution, but, Simplicity reserves the right to implement Simplicity's branding (graphics not exceeding 100 x 100 pixels in total) and reciprocal links to enhance web marketing and reciprocal advertising for the Client;
 - (c) use any user data for marketing, referral or other purposes except as expressly authorised by this agreement;
 - (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Web Site; or
 - (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this agreement.
- 10.6 Simplicity will make best efforts to ensure that the Client receives continual and uninterrupted Services (including network or hosting servers) during the term of this agreement, however Simplicity does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of Simplicity. In no event though, shall Simplicity be liable to the Client for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, lack of connection or slow connection) of Simplicity to provide Services under this agreement, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this agreement.
- 10.7 Simplicity may, at their sole discretion, limit or deny access to the Services is, in the judgement of Simplicity, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.
- 10.8 *Web Site Maintenance Services:*
- (a) Subject to clause (b), Simplicity will provide the Web Site Maintenance Services in accordance with the maintenance terms set out in Simplicity's maintenance schedule.
 - (b) The Client will procure all necessary authorisations, licences and consents to enable Simplicity to have access to the Web Site in order to provide the Maintenance Services.
- 10.9 *Client's Obligations:*
- (a) The Client will, at its sole cost and expense:
 - (i) subject to any contract with Simplicity for Web Site Development, develop and maintain the Web Site;
 - (ii) provide the content to Simplicity, in such form as reasonably prescribed by Simplicity from time to time, and hereby grants Simplicity a non-exclusive, worldwide, irrevocable licence to use such content for the purposes of hosting the Web Site;
 - (iii) do all things reasonably necessary to enable Simplicity to host the Web Site on Simplicity's webserver;
 - (iv) change the type of hosting account used if that account is deemed by Simplicity to be unacceptable because of poor service, lack of bandwidth or in any other way insufficient to support the Web Site;
 - (v) is responsible for any fees payable and due to previous hosting organisations engaged by the Client;
 - (vi) ensure that content supplied to Simplicity does not contain Prohibited Content, a link to any web site that contains Prohibited Content, or any viruses, trojan horses, malware, adware or phishing software, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.
 - (b) The Client will not:
 - (i) logon to an account that the Client is not authorised to access;
 - (ii) access data or take any action to obtain services not intended for the Client;
 - (iii) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
 - (iv) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
 - (v) transmit any material outlined in clause 10.9(a)(vi);
 - (vi) do anything that prevents or hinders Simplicity from providing Hosting Services to any other person.
 - (c) The Client acknowledges that spamming (i.e. the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited.
- 10.10 *Network Traffic:*
- (a) Network traffic shall be measured by Simplicity and may include all forms of traffic to and from the Web Site. Domestic data transfer is provided free of charge, but Simplicity reserve the right to suspend Hosting Services (at any time and without notice to the Client) for what it deems to be excessive traffic usage.
- 10.11 *Limitation of Liability for Hosting Services*

- (a) In consideration of clause 28.3, in the event the Hosting Services provided to the Client are disrupted or malfunction for any reason, Simplicity's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Client to Simplicity for the Hosting Services during the period of disruption or malfunction.

11. Search Engine Optimisation (SEO) and Domain Registration

- 11.1 Although Simplicity shall use their knowledge and experience to gain the best results possible, Simplicity gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Web Site, or warranty that the Web Site will be effective in promoting the Client's business or result in any increase in sales of the products/services of the Client. Periodic reporting will be sent to the Client's nominated email address, at the sole discretion of Simplicity.
- 11.2 Where Simplicity is to register a domain name on the Client's behalf, Simplicity cannot guarantee the availability of the domain name, nor assume a successful registration or such a name.

12. Risk and Limitation of Liability for Client Data

- 12.1 It shall be the Client's responsibility to copy and save the content, webpage, logo, design or other work to a secondary storage place.
- 12.2 The Client shall provide Simplicity with data in the following formats:
- (a) for text, files shall be in an electronic format as standard text (.txt) or Work (.doc) on a USB, CD-ROM or via email;
 - (b) for imaged, in an electronic format as prescribed by Simplicity on a USB, CD-ROM or via email with the images of a suitable quality applicable for the use intended and without any subsequent image processing being required. Simplicity shall not be responsible for the quality of images scanned from printed materials;
 - (c) additional expenses may be charged to the Client for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing or data entry services.
- 12.3 The Client acknowledges and agrees that Simplicity shall not be held responsible or liable for:
- (a) anything related to the Web Site or any other Services provided including once the Web Site goes live;
 - (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of Simplicity;
 - (c) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by Simplicity. Whilst Simplicity will endeavour to restore the Web Site, files or data (at the Client's cost), it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to Simplicity providing the Services. The Client accepts full responsibility for the Client's software and data and Simplicity is not required to advise or remind the Client of appropriate backup procedures (unless included as part of the Services);
 - (d) any loss or damage to the Client's software or hardware caused by any 'updates' provided for that software.
- 12.4 Simplicity, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by Simplicity to the Client.
- 12.5 The Services are provided on an "as is, as available" basis. Simplicity specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.
- 12.6 *Public Access:*
- (a) The Client understands that by placing information on the Web Site, such information may be accessible to all internet users. Simplicity does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by Simplicity, or on the internet generally.
- 12.7 *Defects, Errors and Omissions:*
- (a) The Client shall inspect/review the Services on provision and shall within seven (7) days of such time notify Simplicity of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford Simplicity an opportunity to inspect/review the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
 - (b) For defective Services, which Simplicity has agreed in writing that the Client is entitled to reject, Simplicity's liability is limited to either (at Simplicity's discretion) replacing the Services or rectifying the Services, provided that the Client has complied with the provisions of sub-clause (a).

13. Title

- 13.1 Simplicity and the Client agree that the Client's obligations to Simplicity for the supply of Services shall not cease (and ownership of any Products shall not pass) until:
- (a) the Client has paid Simplicity all amounts owing to Simplicity for the Services; and
 - (b) the Client has met all other obligations due by the Client to Simplicity in respect of all contracts between Simplicity and the Client.
- 13.2 Receipt by Simplicity of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Simplicity's ownership or rights in respect of the Services, and this agreement, shall continue.
- 13.3 It is further agreed that, until ownership of the Products passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Products and must return the Products to Simplicity on request.
 - (b) the Client holds the benefit of the Client's insurance of the Products on trust for Simplicity and must pay to Simplicity the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Products then the Client must hold the proceeds of any such act on trust for Simplicity and must pay or deliver the proceeds to Simplicity on demand.
 - (d) the Client should not convert or process the Products or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Simplicity and must sell, dispose of or return the resulting product to Simplicity as it so directs.

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- (e) the Client irrevocably authorises Simplicity to enter any premises where Simplicity believes the Products are kept and recover possession of the Products.
- (f) Simplicity may recover possession of any Products in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of Simplicity.
- (h) Simplicity may commence proceedings to recover the Price notwithstanding that ownership of the Products has not passed to the Client.

14. Personal Property Securities Act 1999 (“PPSA”)

- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Products and/or all collateral (account) – being a monetary obligation of the Client for the Services – that have previously been provided, and that will be provided in the future, by Simplicity to the Client.
- 14.2 The Client undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Simplicity may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Simplicity for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of Simplicity.
- 14.3 Simplicity and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by Simplicity, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by Simplicity under clauses 14.1 to 14.5.

15. Security and Charge

- 15.1 In consideration of Simplicity agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies Simplicity from and against all Simplicity’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Simplicity’s rights under this clause.
- 15.3 The Client irrevocably appoints Simplicity and each director of Simplicity as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client’s behalf.

16. Client’s Disclaimer

- 16.1 The Client hereby disclaims any right to rescind, or cancel any contract with Simplicity or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Simplicity, and the Client acknowledges that the Services are bought relying solely upon the Client’s skill and judgment.

17. Defects

- 17.1 The Client shall inspect the Products on delivery and shall within seven (7) days of delivery (time being of the essence) notify Simplicity of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Simplicity an opportunity to inspect the Products within a reasonable time following delivery if the Client believes the Products are defective in any way prior to the Client engaging a third party. If the Client shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which Simplicity has agreed in writing that the Client is entitled to reject, Simplicity’s liability is limited to either (at Simplicity’s discretion) replacing the Products or repairing the Products.
- 17.2 Products will not be accepted for return other than in accordance with 17.1 above, and provided that:
 - (a) Simplicity has agreed in writing to accept the return of the Products; and
 - (b) the Products are returned at the Client’s cost within seven (7) days of the delivery date; and
 - (c) Simplicity will not be liable for Products which have not been stored or used in a proper manner; and
 - (d) the Products are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.3 Simplicity will not accept the return of Products for credit.
- 17.4 Any defects liability period that Simplicity may offer for creating a Web Site for the Client, such defect liability period shall commence from the time of the Client sign off on completion with the following exceptions:
 - (a) where the Client uses other technicians whose work impacts on Products supplied by Simplicity in which case Simplicity shall reserve the right to charge if requested to resolve such issues; and
 - (b) where Simplicity gifts a Web Site, no ongoing maintenance will be included unless additional Services by Simplicity are purchased.

18. Warranty

- 18.1 For Products not manufactured by Simplicity, the warranty shall be the current warranty provided by the manufacturer of the Products. Simplicity shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products.

19. Intellectual Property

- 19.1 Where Simplicity has designed, drawn or developed Products/Services for the Client, then the copyright in any designs and drawings and documents shall remain the property of Simplicity until all contractual obligations including those relating to payment are fulfilled upon which time copyright shall transfer to the Client.
- 19.2 All design work where there is a risk that another party makes a claim, should be registered by the Client with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use. Simplicity shall not be held responsible for any or all damages resulting from such claims.
- 19.3 The Client hereby authorises Simplicity to utilise images of the Services created by Simplicity in advertising, marketing, or competition material by Simplicity including, but not limited to:
- (a) the Client permitting Simplicity to place a small credit on printed material, exhibition displays, advertisement and/or link to Simplicity's own web site on the Client's Web Site, which shall usually be in the form of a small logo or line of text placed towards the bottom of the page;
 - (b) allowing Simplicity to place web sites and other designs, along with a link to the Client's Web Site on Simplicity's own web site for demonstration purposes and to use any designs in Simplicity's own publicity.
- 19.4 The Client shall indemnify Simplicity against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Services or any other deficiency therein. Where the Client has supplied drawings, sketches, files or logo's to Simplicity, the Client warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Client agrees to indemnify Simplicity against any action taken by a third party against Simplicity.

20. Confidentiality

- 20.1 Subject to clause 20.2, each party agrees to treat as confidential the other party's Confidential Information, and agree not to divulge it to any third party, without the other party's written consent.
- 20.2 Both parties agree to:
- (a) use the Confidential Information of the other party only to the extent required for the purpose it was provided;
 - (b) not copy or reproduce any of the Confidential Information of the other party in any way;
 - (c) only disclose the other party's Confidential Information to:
 - (i) employees and third-party providers who need access to the information and who have agreed to keep it confidential;
 - (ii) its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
 - (iii) not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.
- 20.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it.
- 20.4 Confidential Information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this agreement);
 - (b) received from a third party entitled to disclose it;
 - (c) that is independently developed.
- 20.5 The obligations of this clause 20 shall survive termination or cancellation of this agreement.

21. Consumer Guarantees Act 1993

- 21.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by Simplicity to the Client.

22. Default and Consequences of Default

- 22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Simplicity's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Client owes Simplicity any money the Client shall indemnify Simplicity from and against all costs and disbursements incurred by Simplicity in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Simplicity's collection agency fees, and bank dishonour fees).
- 22.3 Further to any other rights or remedies Simplicity may have under this contract, if a Client has made payment to Simplicity, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Simplicity under this clause 22, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 22.4 Without prejudice to any other remedies Simplicity may have, if at any time the Client is in breach of any obligation (including those relating to payment, whether or not the payment is due to Simplicity) Simplicity may suspend or terminate the provision of Services to the Client, (this includes but is not restricted to, withholding domain codes, passwords and Products, and/or blocking or restricting public and Client access to the Web Site, or removing the Web Site from the web completely) and any of its other obligations under the terms and conditions. Simplicity will not be liable to the Client for any loss or damage the Client suffers because Simplicity has exercised its rights under this clause.
- 22.5 Without prejudice to Simplicity's other remedies at law Simplicity shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Simplicity shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Simplicity becomes overdue, or in Simplicity's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Simplicity;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. Cancellation and Termination

- 23.1 Either party may, without liability, cancel these terms and conditions or cancel provision of the Services:

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- (a) if there is no contract term specified, at any time by giving thirty (30) days' notice to the other party;
- (b) if a contract term is specified, at any time after the end of the contract term by giving thirty (30) days' notice to the other party;
- 23.2 Simplicity may, in addition to their right to cancel under clause 23.1:
- (a) do so at any time:
- (i) prior to the commencement of the Services, by giving notice to the Client, in the event Simplicity determine it is not technically, commercially or operationally feasible to provide the Services to the Client;
- (ii) in the event the Client materially breaches these terms and conditions, and such breach is not capable of remedy.
- 23.3 In the event that the Client:
- (a) cancels the provision of Services prior to the expiry of any specified contract term, then the Client shall be liable to pay for the provision of the Services until the expiration of the contact term;
- (b) fails to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the contract term, the contract term shall automatically renew on a monthly basis, unless cancelled by way of the Client providing Simplicity with thirty (30) days' notice.
- 23.4 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this agreement will be terminated by Simplicity (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within seven (7) days from the date of the submitted invoice.
- 23.5 Where the Client cancels an order:
- (a) the initial notification may be by telephone or email but must be confirmed in writing within fourteen (14) days;
- (b) the Client shall be invoiced for all work completed over and above the deposit as per clause 5.4;
- (c) where failure clause 23.5(a) occurs, the Client shall be required to pay the full quoted cost of the Services.
- 23.6 If the Client fails to comply with any of the provisions of this agreement and does not rectify such non-compliance within seven (7) days of Simplicity giving notice either in writing, via fax or email, then Simplicity may without prejudice to any other rights or remedies, and without being liable to the Client for any loss or damage that may result, give notice to the Client terminating their right to use the Web Site, Software and Services. Upon termination of the agreement, the Client shall lose all right to use the Web Site and products, and shall forthwith deliver the Products to Simplicity and destroy all copies made. The Client shall certify in writing that the copies have been destroyed.
- 23.7 In the event the Services are terminated as per clauses 23.5 or 23.6, the Services can be re-instated under a new contract at the prevailing rates; however no credits or discounts will be granted, and reinstatement costs shall apply.
- 23.8 Cancellation of orders for outside parties for services or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 24. Privacy Act 1993**
- 24.1 The Client authorises Simplicity or Simplicity's agent to:
- (a) access, collect, retain and use any information about the Client;
- (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by Simplicity from the Client directly or obtained by Simplicity from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 24.2 Where the Client is an individual the authorities under clause 24.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.3 The Client shall have the right to request Simplicity for a copy of the information about the Client retained by Simplicity, and the right to request Simplicity to correct any incorrect information about the Client held by Simplicity.
- 25. Unpaid Seller's Rights**
- 25.1 Where the Client has left any hardware item with Simplicity for repair, modification, exchange or for Simplicity to perform any other service in relation to the item and Simplicity has not received or been tendered the whole of any monies owing to it by the Client, Simplicity shall have, until all monies owing to Simplicity are paid:
- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 25.2 The lien of Simplicity shall continue despite the commencement of proceedings, or judgment for any monies owing to Simplicity having been obtained against the Client.
- 26. Dispute Resolution**
- 26.1 Simplicity and the Client will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of, or relate to, this agreement, or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.
- 27. Service of Notices**
- 27.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

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27.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

28. General

28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts in Canterbury, New Zealand.

28.3 Simplicity shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by Simplicity, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Simplicity of these terms and conditions, caused by any failure by the Client to comply with their obligations under this agreement, or that arise from any claim relating to the Services by any person that the Client authorises to use the Services, or where due to server downtime or programming errors (alternatively Simplicity's liability shall be limited to damages which under no circumstances shall exceed the Price).

28.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.

28.5 The Client agrees that Simplicity may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Simplicity to provide Services to the Client.

28.6 Neither party shall be liable for any default due to fires, explosions, severe weather, industrial disputes, insurrection, requirements or regulations, or any civil or military authority, acts of war (whether declared or not), civil unrest, acts of God, earthquake, flood, riot, embargo, government act, strike, lock-out, storm, terrorism, or failure or outage of any telecommunications links or other connections forming part of the Internet which are beyond the reasonable control of either party.

28.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.