

The following definitions will apply to this Agreement:

- 1.1. "Acceptance Date" means the earlier of the date the Proposal is signed by you or the date we start performing the Services.
- 1.2. "Account" means the account issued to you by Simpro for you to be able to access the Software, and all users and usernames relating thereto.
- 1.3. "Additional Training" means any training services provided by Simpro in addition to the Implementation Training.
- 1.4. "Agreement" means the Proposal, the Simpro Terms and Conditions of Service, Statements of Work and any schedules attached hereto as varied from time to time but shall exclude any changes made to the Agreement by you unless Simpro has expressly agreed otherwise.
- 1.5. "Authorised Representative" means: (a) your director; (b) your majority owner; and (c) an individual designated or authorised as such by you in the Proposal or within the Software.
- 1.6. "Billing Date" means the Commencement Date.
- 1.7. "Business Day" means a weekday where trading banks are ordinarily open in the jurisdiction applicable to this Agreement.
- 1.8. "Cancellation Fee" means thirty percent (30%) of the Initial Investment (excluding any portion attributable to Hardware).
- 1.9. "Claim" means any claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, Loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, equity, by operation of law or otherwise and whether involving a third party or a party to this Agreement.
- 1.10. "Cooling-off Period" means the longer of: (a) the cooling-off period specified in the Proposal; or (b) the cooling-off period mandated by applicable law.
- 1.11. "Commencement Date" means the earlier of the first day you have access to the Software or setup of the first Hardware.
- 1.12. "Confidential Information" means non-public information, technical data or know-how of a party and/or its affiliates, which is by its nature confidential, which is furnished to the other party in written or tangible form in connection with this Agreement. Oral disclosure will also be deemed Confidential Information if it would reasonably be considered to be of a confidential nature or if it is confirmed at the time of disclosure to be confidential. Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving party and not subject to a confidentiality obligation to the providing party; (ii) independently developed by the receiving party; (iii) publicly disclosed through no fault of the receiving party; (iv) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential; (v) approved for release by written agreement with the disclosing party; or (vi) disclosed pursuant to the requirements of law, regulation, or court order, provided that, where permitted by law, the receiving party will promptly inform the providing party of any such requirement in advance and cooperate with any attempt to procure a protective order or similar treatment.
- 1.13. "Content" means the graphics, text, data, audio, photos, music, sounds, video or similar information or material provided, uploaded or submitted by you or any User to Simpro or the Software in the course of utilising the Software.
- 1.14. "Hardware" means any third party computer hardware provided or resold by Simpro including, but not limited to, simTRAC hardware.
- 1.15. "Initial Implementation" means any services listed in the Proposal under the heading Training and Implementation in the Initial Investment.
- 1.16. "Initial Investment" means the sum of all items listed in the Proposal under the heading Initial Investment.
- 1.17. "Intellectual Property Rights" means any intangible property right provided by law, including but not limited to (i) trademark, trading names, trade dress and service mark rights, (ii) copyrights, (iii) patent rights, (iv) trade secret rights and (vi) design rights.
- 1.18. "Licensor" means Simpro and its Related Entities.
- 1.19. "Losses" means any costs, liabilities, losses, Claims, damages and expenses (including reasonable legal/attorneys' fees whether incurred or awarded) of any kind or nature whether arising in contract, tort (including but not limited to negligence), equity, by operation of law or otherwise and excludes those described in subclause 16.2(f).
- 1.20. "Ongoing Investment" means the sum of all items listed in the Proposal under the heading Ongoing Investment as amended from time to time by the parties.

- 1.21. "Personnel" means any representative, director, employee, contractor or agent employed, engaged or instructed by a party.
- 1.22. "Professional Services" means all software consulting and management services, information technology services, customisation services, installation services, Additional Training or other stipulated services provided to you as specified in a Proposal or Statement of Works other than the Support Services.
- 1.23. "Proposal" means any Proposal and Product Information document entered into between the parties as varied from time to time.
- 1.24. "Related Entities" has the meaning set out in clauses 21, 22, 23, 24, 25 and 26 as applicable.
- 1.25. "Services" means, collectively any and all services provided to you by Simpro including but not limited to services set out in a Proposal, the provision of any Software, Third Party Software or Hardware or the supply of Professional Services.
- 1.26. "Service Level Schedule" means the schedule attached as Schedule A.
- 1.27. "Simpro" means Simpro Software Pty Ltd, Australian Company Number 121 998 945 and its Related Entities.
- 1.28. "Software" means the software platform known as "Simpro", including all modules, tiers, extensions, add-ons and related mobile application or extensions thereto, including all source code, object code, architecture, designs, functionality, content (excluding your Content), concepts, features, and documentation related thereto, as well as all updates and customisations to any of the foregoing but excludes Third Party Software.
- 1.29. "Spam" means emails or other form of communication sent to a recipient who has not granted verifiable consent for the message to be sent to them (unless the recipient's email details were obtained by the sender in the course of the sale or negotiations for the sale of a product or service to that recipient, and the email concerns the sender's similar products and services only), or who has withdrawn such consent or has otherwise refused the use of their details for direct marketing. For clarity, consent is defined as "any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to them".
- 1.30. "Special Categories" are personal data categorised as such under UK GDPR and include any category of data which is sensitive in nature.
- 1.31. "Statement of Work" or "SOW" means a written description of Professional Services only to be performed by Simpro under this Agreement, which shall specify as applicable, the fees associated with the work and other responsibilities of the parties. Each SOW shall remain in effect until terminated in accordance with this Agreement and/or the terms of the SOW.
- 1.32. "Support Services" means the support services further specified in Schedule B.
- 1.33. "Term" means the length of this Agreement as specified in the Proposal or as renewed or amended from time to time.
- 1.34. "Third Party Software" means any third party software provided or made available by Simpro from time to time including, but not limited to, software incorporated in any Hardware.
- 1.35. "Third Party Implementation Services" means software consulting services, which you procure from a third party.
- 1.36. "Upfront Payment" means the Upfront Payment specified in the Proposal.
- 1.37. "User" means any individual expressly permitted by you in connection with your business or use of the Service who are authorised to use the Service and have been supplied with access to the Services by you (or by Simpro at your request).
- 1.38. "User Account" means an individual username and password account issued to you under your Account.
- 1.39. "You", "you", "Your" "your" or "Customer" means the legal entity or individual specified in the Proposal entering into this Agreement in their own right or on behalf of an entity as described in the Proposal.
- 1.40. "Your Data" means any information or data collected by Simpro or provided or submitted by you or any User in the course of utilising the Services.

2. Interpretation

A reference to:

- 2.1. Legislation (including subordinate legislation) is to that legislation as amended re-enacted or replaced, and includes any subordinate legislation issued under it;
- 2.2. A deed or agreement, or a provision of a deed or agreement, is to that deed, agreement or provision as amended, supplemented, replaced or novated;
- 2.3. A person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- 2.4. Anything (including a right, obligation or concept) includes each part of it; and
- 2.5. A singular word includes the plural, and vice versa.

3. Scope of Agreement

This Agreement applies to the Services and will govern any additional Services or variation to the Services Simpro may provide to you from time to time. From the Acceptance Date you are bound by this Agreement and Simpro's policies as communicated and amended from time to time (including Simpro's Personal Data Protection Notice (General)) located at <https://www.simprogroup.com/au/legal> as amended from time to time ("Personal Data Protection Notice"). Simpro may modify this Agreement from time to time, subject to the terms set out in clause 18.

4. Software

- 4.1. License to Software. Subject to payment in full of the fees due to Simpro and compliance with this Agreement, Simpro grants you during the Term, for the number of licences in your subscription, a non-transferable, non-sublicensable, non-exclusive license to access and use the Software as provided by Simpro.
- 4.2. Software Upgrades and Modifications. You agree that Simpro may update, upgrade or modify the Software, at any time, including the removal or modification of previously available functionality; provided, however, that any such updates, upgrades, enhancements and/or modifications shall not materially reduce the functionality of the Software. Subject to the foregoing, unless separately identified as having additional terms, any updates, upgrades, enhancements and/or modifications provided to the Software will

automatically be considered part of the Software and will be subject to the terms of this Agreement.

- 4.3. License to Third Party Software. Your access to, and use of, Third Party Software is at your sole risk and will be governed by the contractual relationship between you and the relevant third party vendor.
- 4.4. Your Obligations: In addition to any other obligations under this Agreement, you agree not to, and will not permit a third party to:
 - (a) Undermine the security or integrity of our computing systems or networks;
 - (b) Use the Services in any way that might impair functionality or interfere with others' use;
 - (c) Access any system without our permission;
 - (d) Security test (that is, penetration testing, red teaming, intrusion testing, code review and any other security testing or assessment activities) or load test any Simpro system without our permission;
 - (e) Circumvent any license, timing or use restrictions that are built into the Services;
 - (f) Introduce or upload anything to our services that includes viruses or other malicious code;
 - (g) Modify, copy, adapt, reproduce, disassemble, decompile, reverse engineer or extract the source code of any part of the Services;
 - (h) Resell, lease or provide the Services in any way not expressly permitted through the Services;
 - (i) Repackage, resell, or sublicense any leads or data accessed through the Services; or
 - (j) Commit fraud or other illegal acts through the Services.

5. Hardware

- 5.1. This clause 5 applies if the Services include the resale of Hardware:
 - (a) Subject to payment in full of the fees due to Simpro for the Hardware as set out in the Proposal and compliance with this Agreement, Simpro agrees to resell you the Hardware in accordance with the Proposal.
 - (b) The parties acknowledge that all Hardware provided by Simpro is third party supplied Hardware, which will be governed by and subject to the manufacturer's terms and conditions.

- (c) You agree that:
- (i) Upon delivery of the Hardware pursuant to clause 5.3: (1) risk of loss or damage to the Hardware shall pass to you; and (2) you shall have no recourse to Simpro for the Hardware.
 - (ii) Subject to the manufacturer's terms and conditions, upon payment in full of the fees due for the Hardware, ownership to the Hardware shall pass to you.
 - (iii) Without limiting Simpro's rights under this Agreement, and except as otherwise set forth in a Proposal, Simpro is not liable for:
 - (A) Any defective or malfunctioning Hardware;
 - (B) Hardware not installed in accordance with any manufacturer directions; or
 - (C) the Hardware being decommissioned or rendered obsolete.
- 5.2. **Refund:** Notwithstanding anything else in this Agreement, you acknowledge that the cost for, and any costs related to, the Hardware are non-refundable. Simpro may, at Simpro's sole discretion, elect to refund you the cost of any Hardware, where you have terminated this Agreement during your Cooling-off Period, provided that the Hardware has either: (a) not been dispatched by Simpro prior to the termination (b) is returned unopened and undamaged to Simpro within five (5) Business Days of the termination.
- 5.3. **Delivery:** Subject to payment of the Initial Investment in accordance with the Proposal and satisfaction of any other matter required in a Proposal or required by Simpro, Simpro will deliver the Hardware to the address specified in your Proposal or any other location that is agreed between the parties. The Hardware shall be deemed to have been delivered in good working order and in accordance with this Agreement unless you notify Simpro to the contrary within three (3) Business Days of delivery.
- 5.4. **Installation:**
- (a) You and Your Personnel are responsible for unpacking, inspecting for defects, and installing and configuring the Hardware in accordance with any instructions provided to you and in a professional and workmanlike manner.
- 5.5. **Your Obligations:** In addition to any other obligations under this Agreement, with respect to the Hardware you agree to:
- (a) Maintain and service the Hardware entirely at your own cost and strictly in accordance with the requirements and recommendations of Simpro and the manufacturer;
 - (b) Not attempt to alter, adapt, tamper, reverse engineer or make any addition to the Hardware or its associated software;
 - (c) Use the Hardware in accordance with any Hardware specifications, instructions, directions, guidelines or manuals provided by Simpro or the manufacturer;
 - (d) Provide any information reasonably requested by Simpro, including in relation to installation, operation, inspections, servicing or defects; and
 - (e) Comply, at your own cost, with all applicable laws relating to the use of the Hardware, including obtaining and maintaining any licenses, permits, authorities or registrations required.

6. Access and Availability

- 6.1. **Availability.**
- (a) Except as set forth in (b), Simpro will make all commercially reasonable efforts to ensure that the Software is available in accordance with the terms of the Service Level Schedule. To the maximum extent permitted by applicable law, your sole remedy for any failure to provide the Software in accordance with the Service Level Schedule shall be the service credits specified therein.
 - (b) Free trials of Software and Previews (as defined in clause 6.5 below) are provided by Simpro on an AS AVAILABLE basis.
- 6.2. **Suspension of Services:** Simpro may suspend or interrupt the Services, in whole or in part, if:
- (a) You or any Users are using the Services in breach of this Agreement or in breach of the law;
 - (b) Your system, your Account, User Accounts or Hardware has been compromised or unlawfully accessed;
 - (c) Suspension of the Services is necessary to protect the infrastructure of Simpro or its affiliates, or is necessary to protect Simpro's other customers;
 - (d) Suspension is required under the law or necessary to protect Simpro's rights; and



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- (e) If you fail to pay the fees applicable under this Agreement when due and you have not remedied the failure within fifteen (15) Business Days after receiving notification in writing.

6.3. Passwords and Access.

- (a) Simpro shall issue you User Accounts for the Software.
- (b) You must use all commercially reasonable efforts to prevent unauthorised individuals and entities access to your Account or any User Accounts.
- (c) You are responsible for:
 - (i) All activities that occur under your Account other than those performed by Simpro; and
 - (ii) Maintaining the security and confidentiality of all your Account usernames and passwords. You must notify Simpro promptly of any unauthorised use of your Account or any other known or suspected breach of security of which you become aware.
- (d) Simpro may access your Account in its proper performance of the Services.

6.4. Simpro API.

- (a) Access to, and use of, Simpro's API is subject to the terms, conditions and limitations described in this Agreement as well as the API documentation located [here](#) and [here](#) ("API Documentation"), which may be amended by Simpro, in its sole discretion, at any time, and which is incorporated into this Agreement.
- (b) You may only use the Simpro API as contemplated in the API Documentation and your use is subject to call, usage and other limits as described therein or as we otherwise notify you.
- (c) Simpro reserves the right to charge you for your use of the Simpro API with prior notice to you.
- (d) Simpro reserves the right, at its sole discretion, to immediately block access to the Simpro API:
 - (i) if, in Simpro's reasonable opinion, use is being made:
 - (A) for a reason other than legitimate business-to-business data integration;

- (B) in a negligent or reckless manner;

- (C) in violation of this Agreement, the API Documentation, the Personal Data Protection Notice, a Third Party Integration Agreement and/or applicable law;

- (ii) if, in Simpro's reasonable opinion, material containing software viruses or other computer code, files, or programs designed to interrupt, destroy or limit the functionality of any software or hardware may, is being or has been, transmitted;

- (iii) If, in Simpro's reasonable opinion, continued use may interfere with the use of the Simpro API by others;

- (iv) If, in Simpro's reasonable opinion, continued use may cause undue technical stress to the Simpro API; and/or

- (v) once the relevant licenses to the Software have expired or have been terminated.

- (e) You agree not to use, nor permit any third party to use, the Simpro API in a manner that violates any applicable law, regulation, this Agreement or the API Documentation.

- (f) YOU AGREE THAT YOU ARE LIABLE FOR THE ACTS AND OMISSIONS OF ANY THIRD PARTY TO WHOM YOU HAVE PROVIDED ACCESS TO THE SIMPRO API.

- (g) TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SIMPRO API IS PROVIDED ON AN "AS IS" , "WITH ALL FAULTS," AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED. SIMPRO DOES NOT WARRANT OR GUARANTEE THAT USE OF THE SIMPRO API WILL BE FREE FROM DEFECTS, ERROR-FREE OR UNINTERRUPTED OR THAT CONTENT AND/OR DATA LOSS WILL NOT OCCUR.

- (h) TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER SIMPRO NOR ANY OFFICER, EMPLOYEE, DIRECTOR OR ANY OTHER REPRESENTATIVE OF SIMPRO SHALL BE LIABLE TOWARDS YOU, YOUR CUSTOMERS, CLIENTS OR TOWARDS ANY THIRD PARTY, UNDER OR IN CONNECTION WITH THE SIMPRO API, IN CONTRACT, PRE-CONTRACT,



TORT OR OTHERWISE FOR ANY ECONOMIC LOSS, LOSS OF FUNCTIONALITY OR ANY LOSS OF GOODWILL OR REPUTATION.

6.5. Review, beta, or other pre-release features or services

Simpro may include preview, beta, or other pre-release features or services offered to obtain customer feedback ("Previews"). Previews are made available to you on the condition that you agree to these terms of use. PREVIEWS ARE PROVIDED "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE". Previews may not be covered by customer support and are subject to any additional notices provided with the Preview. Certain named Previews may be intended for future release at additional cost despite being offered for free during the Preview period. Simpro may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into "General Availability."

7. Ownership

7.1. Software Ownership: The Licensor retains all right, title and interest in and to the Software, and all Intellectual Property Rights related thereto. Title to and ownership of any modifications, upgrades, updates or customisations of the Software from any source, including paid Professional Services, shall be held exclusively by Simpro. In addition, to the extent you provide any verbal or written ideas, suggestions, feedback, error reports or corrections concerning the Software ("User Feedback"), you hereby assign, transfer and convey to the Licensor all worldwide right, title, and interest in and to any and all User Feedback, including, without limitation, any ideas, inventions, discoveries, original works of authorship, findings, conclusions, concepts, and improvements in such User Feedback. You agree to perform such acts, and execute and deliver such instruments and documents, and do all other things as may be reasonably necessary to evidence or perfect the rights of Simpro set forth in this clause 7.1.

7.2. Third Party Software and Hardware: You acknowledge that your Intellectual Property Rights in Third Party Software and Hardware will be governed by the contractual relationship between you and the relevant third party vendor.

7.3. Content. As between you and Simpro, your Content is and shall remain your property. You grant Simpro a non-exclusive, worldwide, royalty-free and irrevocable license to use, reproduce, modify and prepare derivative works of your Content for the Term of this Agreement to the extent required for the provision of the Services.

8. Support Services

Simpro will use all commercially reasonable efforts to

provide the Support Services in accordance with this Agreement.

9. Implementation Training

9.1. For the purposes of this clause, "Implementation Training" means any items listed under the Training and Implementation section of your Proposal.

9.2. The relevant fees for the Implementation Training will be set out under the Training and Implementation section of your Proposal.

9.3. You acknowledge that any and all unused Implementation Training expires twelve (12) months from the Acceptance Date. If you require further training, you must contact Simpro to purchase Additional Training.

9.4. Notwithstanding anything else in this Agreement, you acknowledge that a minimum of five (5) Business Days' notice is required to change or cancel any training scheduled with Simpro. If less than five (5) Business Days' is given, you will incur the full fees of the relevant training days plus any non-refundable out of pocket expenses, such as travel costs and disbursements that Simpro has incurred.

10. Professional Services

10.1. If you or your Authorised Representative request Professional Services, Simpro shall issue a Statement of Work covering such Professional Services.

10.2. Unless stated otherwise in an applicable SOW, any estimates of time provided in connection with deliverables or Services, are good faith projections, but are not guarantees. Unless otherwise agreed to by the parties in writing, in the event that Simpro provides Professional Services on a "time and materials" rate basis, Simpro shall charge you at Simpro's standard rates then in effect. In the event that Simpro provides Professional Services hereunder on a "fixed fee" rate basis, such fixed fee will cover only the specific tasks, expenses, and deliverables that the Statement of Work defines as included within the fixed fee. Unless otherwise agreed to by the parties in writing, any and all deliverables that you request that fall outside the Statement of Work or are otherwise not expressly included within such fixed fee payment schedule will be provided on a time and materials basis at Simpro's standard rates then in effect.

10.3. You shall pay Simpro for the Professional Services in accordance with the payment terms set forth in the applicable Statement of Work. Subject to the Statement of Work, Simpro shall invoice you for all

such fees when due, which shall be paid by you within thirty (30) days of receipt.

10.4. Simpro shall be entitled to reimbursement for all documented, reasonable, out-of-pocket expenses incurred in connection with the provision of Professional Services to you under this Agreement, including, without limitation, travel, lodging, meals and transportation. Simpro shall provide estimates of such expenses in each SOW. Such expenses are to be invoiced to you as they are issued and are to be paid by you as set out in the invoice. Any expenses in excess of five hundred dollars (\$500.00) shall require your pre-approval.

10.5. Unless otherwise indicated therein, all SOWs, to the extent they relate to Professional Services, may be terminated by either party:

- (a) If the other party breaches a material term of the SOW or this Agreement and such breach, to the extent capable of remedy, is not remedied within fifteen (15) Business Days' notice; or
- (b) with 30 days advance written notice for any reason.

10.6. In consideration of the parties' rights to terminate a SOW at any time, the parties agree that Simpro will not be liable for any Losses incurred or suffered by you or any other person as a result of either parties' termination of a SOW in accordance with clause 10.5(b).

10.7. Upon termination of a SOW for any reason, without limitation to any other rights at law or equity, Simpro shall cease all work being performed thereunder and issue you with a final invoice. Termination of a SOW shall not eliminate your obligation to pay for time, expenses or deliverables incurred or performed prior to termination. In the event that you terminate a fixed fee SOW before deliverables are completed but after they have been commenced by Simpro, such SOW shall be converted to a time-and-materials SOW for such commenced but incomplete deliverables, and Simpro shall invoice you for the reasonable time incurred in connection with such incomplete deliverables.

11. Your Obligations

11.1. You are authorised to permit Users access to the Software via a User Account with concurrent Users up to the number of licences in your subscription and subject to your payment of the applicable fees.

11.2. You will ensure that you have all consents and notices in place, as required by applicable law, for your use of the Services.

11.3. You understand and agree that:

- (a) You and your Users are not permitted to distribute, upload, transmit, store, make available or otherwise publish or process through the Services, Content that:
 - (i) Is unlawful or encourages another to engage in anything unlawful;
 - (ii) Contains a virus or any other similar programs or software which may damage the operation of Simpro's or another's computer;
 - (iii) Violates the rights of any party or infringes upon the patent, trademark, trade secret, copyright, or other intellectual property right of any party;
 - (iv) Breaches the terms of Simpro's privacy policies or any applicable third-party privacy policy;
 - (v) includes any Special Category of personal data, including protected health information;
 - (vi) requires special precautions to protect from unauthorized use, including payment card information and PINs;
 - (vii) Is libelous, defamatory, obscene, invasive of privacy or publicity rights, abusing, harassing, fraudulent, misleading, illegal, threatening or bullying.
- (b) You understand and agree that Simpro reserves the right to edit, modify or remove content being hosted by Simpro, including for violations of the above standards.
- (c) Your Users may only use the Software, Third Party Software and Hardware in accordance with applicable law.
- (d) The Software may place phone calls and text messages, which may incur fees with your carrier or your User's carriers. You agree that Simpro is not responsible for such fees.
- (e) Certain aspects of the Software, Third Party Software and Hardware may permit tracking of individuals and items. It is your sole responsibility to, as required by applicable law, obtain their consent or alert individuals interacting with, using or being tracked by the Software, Third Party Software and/or Hardware
- (f) The Hardware may require certain third party services in order to operate. You will conduct your own enquiries into the extent of third party services and their suitability to support the operation of the Hardware. You agree that Simpro is not responsible for any lack of or interruption in the third party services or for any fees associated with the third party services.

- (g) You must not sublicense, resell or supply the Services for use in, or for the benefit of, any other organisation, entity, business, or enterprise without Simpro's prior written consent or unless authorised under this Agreement.

12. Payment

- 12.1. **Initial Investment Payment:** If there is an Upfront Payment, then upon acceptance of the Proposal you will be issued with an invoice for the Upfront Payment. Unless the Proposal states otherwise, the Upfront Payment is payable on the Acceptance Date. If any further amount is payable for the Initial Investment, the amount must be paid as set out in the Proposal.
- 12.2. **Ongoing Investment:** If there is an Ongoing Investment, then it must be paid as set out in the Proposal.
- 12.3. **Other Fees:** You agree to pay all fees for the provision of the Services and/or Hardware as set out in the Proposal, in the manner specified in the Proposal and for the duration of the Term. If Statements of Work are executed, you shall pay the fees in the Statements of Work at the times specified therein. If no time is specified in a Proposal or Statement of Work, fees will be payable within thirty (30) days of receipt of an invoice from Simpro for said fees. Fees are exclusive of sales taxes, which may be applicable to the Services and/or Hardware and payable by you.
- 12.4. **Set-off:** You acknowledge that all payments to be made by you under this Agreement must be made without set-off unless otherwise expressly agreed in writing by Simpro. Simpro may, in Simpro's sole discretion, set-off any amount owing or that may become owing from you to Simpro, whether in relation to this Agreement or otherwise, from any amount that Simpro owes to you from time to time.

13. Payment Processors

- 13.1. Simpro uses a third-party payment processor ("Payment Processor") to charge you through an online account for use of the Services. The processing of payments will be subject to the terms and conditions governing the debit arrangements between you and Simpro as set out in your Direct Debit Request and in your Direct Debit Request Service Agreement.
- 13.2. You agree to pay Simpro, through the Payment Processor, all fees and charges owed to Simpro associated with the Services. You authorise Simpro, through the Payment Processor, to charge the fees and charges (including any recurring fees and charges) to your chosen payment method ("Payment Method").

- 13.3. If your allocated Payment Method is rejected or is declined for insufficient funds you agree that Simpro may pass on the costs of any charges or fees levied by your Payment Method in your next payment to Simpro.
- 13.4. ONCE AUTHORISED BY YOU, SIMPRO MAY SUBMIT PERIODIC CHARGES WITHOUT YOUR FURTHER AUTHORISATION, UNTIL YOU PROVIDE PRIOR NOTICE (RECEIPT OF WHICH IS CONFIRMED BY SIMPRO) THAT YOU HAVE TERMINATED THIS AUTHORISATION OR WISH TO CHANGE YOUR PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE SIMPRO REASONABLY COULD ACT.
- 13.5. Other than taxes imposed on Simpro relating to its income, receipts and employment-related taxes, you will bear responsibility for all applicable taxes, duties, and other governmental charges, including sales or value-added tax, use and withholding taxes (collectively, "Taxes") resulting from the Services. You will pay the Taxes as are necessary to ensure that the net amounts received by Simpro after all Taxes are paid are equal to the amounts that Simpro would have been entitled to in accordance with this Agreement as if the Taxes did not exist.
- 13.6. If you believe that any specific charge under this Agreement is incorrect, you must contact Simpro in writing within thirty (30) days of invoice date setting forth the nature and amount of the requested correction; otherwise invoices are deemed final.
- 13.7. Your account will be considered delinquent (in arrears) if payment in full is not successful when a charge is initiated. In addition to other applicable remedies, Simpro reserves the right to suspend and/or terminate your access to the Services and/or terminate this Agreement if your Payment Method is declined or fails, and your account therefore is delinquent. Charges to delinquent accounts are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection, including reasonable legal/attorneys' fees and court costs.
- 13.8. You agree that Simpro may change third-party processors from time to time with reasonable notice to you of the same.
- 13.9. Simpro disclaims all liability in connection with the acts and omissions of any third-party payment processor to which you may integrate with the Services as Third Party Software ("Your Payment Processor"). Your relationship with Your Payment Processor will be governed by the contractual relationship between you and the relevant third party vendor.

<https://www.simprogroup.com/legal> or provided on request.

14. Your Data

14.1. Ownership of Data: As between you and Simpro, Your Data is and will remain your property.

14.2. License to Data: You grant to Simpro a non-exclusive license to use, copy, store, analyse, transmit, display and back up Your Data to: enable you and your Users to use our products and services; allow us to improve, develop and protect our products and services; create new products and services; communicate with you about our products and services; send you information we think may be of interest to you based on your marketing preferences; and disclose to third party service providers and partners to enable and support such purposes. Furthermore, we may create anonymised statistical data from Your Data and usage of our Services, including through aggregation. Once anonymised, we may use it for our own purposes, such as to provide and improve our products and services, to develop new products and services or offerings and to identify business trends.

14.3. Privacy: You agree that:

- (a) Simpro and its Related Entities may monitor you and your User's use of the Services and may collect and use data and related information, including but not limited to information about you and your User's use, which may be gathered periodically to ensure compliance with this Agreement, to study and improve the Services, to facilitate the provision of updates, product support and to provide the Services under this Agreement. Aggregated statistical data will be the property of Simpro. Furthermore, Simpro may communicate with you and your Users regarding the Services and their functions, and for other requirements of Simpro.
- (b) You will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of any data to Simpro for the duration and purposes of this Agreement.
- (c) You will not use Simpro's Services to store any Special Category of personal data and acknowledge that Simpro will not be liable under this Agreement for any data that may be stored, which is classified as Special Category data.
- (d) Any collection of Your Data or a User's data by Simpro and its Related Entities shall be collected in accordance with the Personal Data Protection Notice which you agree forms part of this Agreement. A copy of the Personal Data Protection Notice can be found at

- (e) Nothing in this Agreement prevents Simpro and its Related Entities from disclosing Your Data to the extent required by law such as if required by subpoena or court order.

14.4. Spam:

- (a) You warrant that you will not utilise your User Account or the Services to send marketing emails and/or other forms of marketing communication to Users or Third Parties either representing you or Simpro and our Services without their express consent. Consent must be given in accordance with relevant and applicable law.
- (b) If we suspect Spam activity on your Account, we may suspend the provision of any Services and your User Accounts pending further investigation.
- (c) In the event of Spam activity being confirmed, Simpro may terminate this Agreement, your Account, the provision of any Services and your User Accounts at Simpro's discretion. If Simpro terminates this Agreement in accordance with this clause 14.4, you will forfeit all pre-payments, credits and rights to receive the Services under this Agreement.

15. Third Party Services and Implementation

15.1. You acknowledge that:

- (a) You may use third party products and/or services in support of the Services under this Agreement ("Third Party Services").
- (b) The Third Party Services are not provided by Simpro and Simpro provides no warranty and accepts no liability whatsoever in relation to Third Party Services.
- (c) Suggestions, recommendations or resales by Simpro for, or of, Third Party Services are made by Simpro without warranty or guarantee of any kind. You assume all responsibility for exercising independent judgment in determining whether the suggestions, recommendation or resales are sufficient for your purposes.
- (d) The Third Party Services may be subject to the third party vendor's additional terms and conditions.

15.2. Third Party Implementation Services

You acknowledge that:

- (a) You were offered implementation services by Simpro but have chosen Third Party Implementation Services instead;
- (b) Third Party Implementation Services are not provided by Simpro and Simpro provides no warranty and accepts no liability whatsoever in relation to Third Party Implementation Services;
- (c) you are solely responsible for exercising independent judgment in determining whether Third Party Implementation Services are sufficient for your purposes;
- (d) Should you require remedial works by Simpro in relation to Third Party Implementation Services, then such works will be provided by Simpro as Professional Services and charged on a time and materials basis; and
- (e) The Third Party Services may be subject to the third party vendor's additional terms and conditions.

16. Liability

16.1. Indemnity:

- (a) When Simpro indemnifies you:
TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT OR CLAIMS ALLEGING INFRINGEMENT.
- (i) Simpro will defend, indemnify, and hold you and your Personnel harmless from and against all Losses arising from any third party suit, action, or proceeding arising from the actual or alleged infringement of third party Intellectual Property Rights by the Software (other than in connection with your Content, Your Data, the Hardware, the Third Party Software, any modifications or alterations to the Software not performed by Simpro or its suppliers, misuse of the Software or your breach of this Agreement) ("Infringement Action").
- (ii) In case of an Infringement Action, Simpro may, in its sole discretion and without additional cost to you, procure a license that will protect you against the Infringement Action, replace the Software with a non-infringing version, or if it deems such remedies impractical, Simpro may terminate this Agreement without incurring any liability.
- (iii) If Simpro terminates this Agreement in accordance with this subclause 16.1(a), you will

receive a pro-rata refund of fees prepaid prior to the date of termination. You will not be entitled to any refund for the periods in which you have received the Services in accordance with this Agreement.

- (b) When you indemnify Simpro: To the maximum extent permitted by law, you will compensate, reimburse, indemnify and hold Simpro, Simpro's Personnel and Simpro's Related Entities harmless from and against all Losses, howsoever arising, that Simpro, Simpro's Personnel and Simpro's Related Entities incur or may suffer or incur in connection with any Claim:
 - (i) Alleging that Your Data, your Content or other data or information supplied by you or your Personnel infringes the Intellectual Property Rights or other rights of a third party or has caused harm to a third party;
 - (ii) Relating to your breach or alleged breach of this Agreement, an agreement with a third party or any applicable law;
 - (iii) Arising out of your or your Personnel's act, omission, negligence or misconduct;
 - (iv) Arising out of Claims relating to use of your Account or you or your Users' use of the Services; or
 - (v) Arising out of Claims relating to liability excluded, waived, assumed or acknowledged as your responsibility in this Agreement.
- (c) At Simpro's sole discretion, Simpro may elect to require you to undertake any action or be directly responsible for any amount that is or will be your responsibility under clause 16.1(b) before Simpro undertakes or is required to undertake the action or pays or is required to pay the amount. The parties expressly agree that any selection made under this clause 16.1(c) does not prejudice Simpro's rights under this Agreement or at law, including any right to recover any amount payable by you under this Agreement as a debt payable on demand.
- (d) In case of any Claim that is subject to indemnification under this Agreement, the party that is indemnified ("Indemnitee") will provide the indemnifying party ("Indemnitor") reasonably prompt notice of the relevant claim.
- (e) The Indemnitor will defend and/or settle, at its own expense, the Claim, subject to indemnification under this Agreement.
- (f) Each party will cooperate in good faith with the other to facilitate the defence of any such Claim and will tender the defence and settlement of any

action or proceeding covered by this clause to the Indemnitor upon request.

- (g) Claims may be settled without the consent of the Indemnitee, unless the settlement includes an admission of wrongdoing, fault or liability or the Indemnitee is Simpro.

16.2. Due Diligence, Disclaimers and Limitations

- (a) YOU SHOULD APPLY DUE DILIGENCE TO ENSURE THE SERVICES MEET YOUR SPECIFIC REQUIREMENTS. YOU SHOULD COMPARE YOUR BUSINESS REQUIREMENTS AGAINST THE FUNCTIONAL CAPABILITIES DETAILED [HERE](#).

- (b) TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT ONLY TO THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT THE SERVICES ARE PROVIDED "AS IS", WITHOUT ANY FURTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED. YOU ASSUME ALL RESPONSIBILITY FOR EXERCISING INDEPENDENT JUDGMENT IN DETERMINING WHETHER THE SERVICES OR THE MATERIALS GENERATED THEREBY ARE ACCURATE OR SUFFICIENT FOR YOUR PURPOSES. SIMPRO DOES NOT WARRANT OR GUARANTEE THAT USE OF THE SERVICES WILL BE FREE FROM DEFECTS, ERROR-FREE OR UNINTERRUPTED OR THAT CONTENT LOSS WILL NOT OCCUR. PREVIEWS AND FREE TRIALS ARE PROVIDED ON AN AS-IS, WITH ALL FAULTS AND AS AVAILABLE BASIS.

- (c) TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT TO THE EXTENT OTHERWISE SET FORTH HEREIN, SIMPRO IS NOT LIABLE FOR ANY LOSSES OR CLAIMS WHETHER ARISING IN CONTRACT, TORT, EQUITY, BY OPERATION OF LAW OR OTHERWISE ARISING OUT OF THIS AGREEMENT OR THE SERVICES.

- (d) Third Party Software, Hardware, Testing Third Party Services and Third Party Implementation Services: You acknowledge that, to the maximum extent permitted by law, Simpro, Simpro's Personnel and Simpro's Related Entities will not be liable to you or any third party for any Losses, including but not limited to, any Losses arising out of:

- (i) Third Party Software, Hardware, Third Party Services or Third Party Implementation Services, in any way;
- (ii) Your installation, testing or lack of testing of the Third Party Software or Hardware;
- (iii) Your wilful misconduct, recklessness, negligence or misuse;

- (iv) Your failure to follow Simpro's reasonable directions;

- (v) Any lack or interruption of signal, power, internet or other Third Party Service howsoever arising,

- (e) Your Data: For loss or corruption of Your Data, Simpro's liability will be limited to taking reasonable steps to try and recover that data from available backups.

- (f) Total Aggregate Liability: In no event will Simpro's aggregate liability exceed the lesser of:

- (i) The Ongoing Investment due for the six (6) month period measured by the monthly payment obligation at the time of the event or circumstance giving rise to the Claim; and

- (ii) The Ongoing Investment paid by you prior to the time of the event or circumstance giving rise to the Claim.

- (g) Consequential Damages: To the maximum extent permitted by law, neither party be liable for any indirect, special, incidental, consequential damages of any type or kind (including, without limitation, earnings, revenue, profits, goodwill, use or other economic advantage, loss of business, production or opportunity, loss or corruption of data, wasted overheads, financial penalties imposed by any government or agency or any other indirect or consequential loss arising from or in relation to this Agreement). This clause will continue to apply notwithstanding the termination or expiration of this Agreement.

17. Confidentiality

17.1. Neither party will use the other party's Confidential Information except already provided for in this Agreement and as reasonably required for the performance of this Agreement. Each party will hold in confidence the other party's Confidential Information by means that are no less restrictive than those used for its own confidential materials and no less restrictive than what is reasonable in the circumstances. Each party agrees not to disclose the other party's Confidential Information to anyone other than its Personnel or advisors who are bound by confidentiality obligations no less restrictive than these and who need to know the same to perform such party's obligations hereunder or to assist a party in meeting its legal obligations. The confidentiality obligations set forth in this clause 17 will survive for as long as applicable information meets the definition of Confidential Information.

17.2. Upon termination or expiration of this Agreement, except as otherwise agreed in writing or otherwise stated in this Agreement, each party will, upon the request of the disclosing party, either:

- (a) Return all Confidential Information of the disclosing party and all copies thereof in the receiving party's possession or control to the disclosing party; or
- (b) Destroy all Confidential Information and all copies thereof in the receiving party's possession or control.

Notwithstanding the foregoing, nothing herein shall require a party to remove or delete the other party's Confidential Information, which: (i) must be retained for compliance purposes; (ii) is contained in systems, archives or backups which cannot be practicably deleted; (iii) must be retained as required by applicable law, accounting standard, stock exchange rule or for sound corporate governance purposes, provided that any such retained information shall remain subject to the confidentiality obligations of this Agreement.

17.3. Where a party is required to disclose Confidential Information pursuant to any legal process, that party will, where permitted by law, give prompt notice to the other party, if legally permissible, to enable the disclosing party to challenge such demand.

17.4. Commencing day thirty-one (31) following termination or expiration of the Services, Simpro reserves the right to permanently delete your Confidential Information, Your Data and/or Your Content.

18. Variations

18.1. Variations to Fees: Simpro may change your current fees and charges by providing notice in accordance with clause 18.3.

18.2. Variations to Services:

(a) You or your Authorised Representative may request a variation to your Agreement to add or decrease licences or Hardware at any time by submitting a request through your Account.

(b) If you upgrade your subscription in any way by adding licences or Hardware, you will be charged the fees for your upgraded subscription from the next Billing Date following the date Simpro provides you with access to the upgraded subscription.

(c) If you downgrade your subscription by reducing licences or Hardware, you will be charged the fees for your downgraded subscription from the date of the next monthly anniversary of the Billing Date immediately following the date the downgrade becomes effective.

(d) Any charges incurred prior to the date of the downgrade is effective are non-refundable and you will not be entitled to any pro-rata refund or credit to your Account.

(e) if the Term specified in the Proposal is for a Fixed Term:

(i) unless otherwise set out in the Proposal, additional licences or Hardware will be priced at the then applicable month-to-month price; and

(ii) you will not be able to decrease your commitment to below the number specified in your Proposal.

18.3. Variations to this Agreement:

- (a) If the Term specified in the Proposal is Monthly, Simpro may make any changes to this Agreement or Simpro's policies at Simpro's sole discretion by written notice. If it involves a material change to your rights or responsibilities (which includes a change in price), we will give you thirty (30) days' notice in writing of the change. If you do not agree to the change, you may terminate this Agreement in accordance with clause 19.5 below.
- (b) If the Term identified in the Proposal is for a Fixed Term, by written notice and at Simpro's sole discretion, Simpro may make changes to this Agreement or Simpro's policies that do not materially change your rights or responsibilities. By written notice no less than 90 days prior to the expiry of the Term, Simpro may make changes to this Agreement that materially change to your rights or responsibilities (which includes a change in price).

18.4. Date of Variation: Any variation to this Agreement or Simpro's policies will be deemed effective and binding upon you:

- (a) From the date of notice for changes that do not materially change your rights or responsibilities; or
- (b) If it involves a material change to your rights or responsibilities (which includes a change in price):
 - (i) If the Term identified in the Proposal is Monthly, from expiry of the notice period, provided you have not otherwise exercised your right to terminate this Agreement in accordance with clause 18.3(a); or
 - (ii) If the Term identified in the Proposal is Fixed, from the commencement of the next renewed Term.

18.5. Changes to Authorised Representative: You must notify us immediately if your Authorised Representatives change at any time. Until we receive such notification we will be entitled to rely on instructions and approvals we receive from the Authorised Representative per our records.

19. Term and Termination

19.1. Cooling-off Period: This subclause 19.1 applies if a Cooling-off Period is provided for in your Proposal

or such a period is mandated by applicable law. If you elect to terminate this Agreement during the Cooling-off Period, you must provide Simpro with written notice of your election prior to the conclusion of the Cooling-off Period. Subject to this Agreement, if written notice is received within this timeframe, any amount paid by you to Simpro for the Services will be refunded to you. You acknowledge that the purpose of the Cooling-off Period is for you to confirm that the Services and Hardware satisfy your needs.

19.2. Cancellation Fee

This sub-clause applies if the Term identified in the Proposal is Monthly. If you elect to terminate this Agreement at any time after the conclusion of the Cooling-off Period and prior to the Commencement Date, Simpro is entitled to withhold the Cancellation Fee and any non-refundable expenses reasonably incurred by Simpro in relation to Initial Implementation. You acknowledge that the Cancellation Fee is withheld in consideration for Services rendered prior to the date of termination. If this Agreement is terminated at any time on or after the Commencement Date, Simpro is entitled to withhold the full Initial Investment. This clause in no way limits Simpro's rights or remedies whether under this Agreement or any law or the non-refundability of any Hardware.

19.3. Fixed Term: This subclause applies if the Term specified in the Proposal is for any period other than Monthly. Your rights to the Software commence on the Commencement Date and will continue until the expiry of the Term ("Expiry Date"). You must provide Simpro with at least ten (10) Business Days written notice of the termination. You acknowledge that, as the Term is fixed, if you terminate this Agreement or if this Agreement is terminated by Simpro due to your breach prior to the Expiry Date, then a condition of early termination you will pay Simpro the Fees that would have been payable to Simpro through the Expiry Date. Unless you give us written notice of non-renewal no less than 60 days prior to the expiry of the Term, and unless otherwise set out in the Proposal, the Term will automatically renew for successive terms, each of duration equal to the period specified in the Proposal.

19.4. Monthly Term: This subclause applies if the Term specified in the Proposal is Monthly. Your rights to the Software commence on the Commencement Date and will continue on a month to month basis until terminated by either party. Either party may terminate at any time however, you must provide Simpro with at least ten (10) Business Days written notice of the termination. Termination will be effective on the first monthly anniversary of the Billing Date following expiry of the notice period. To the extent permitted by law, payments are not refundable and Simpro does not provide refunds or credits for any partial subscription periods

19.5. **Termination for Variation:** If this Agreement is terminated in accordance with clause 18.3(a), you must give us thirty (30) days' notice in writing of the termination. Termination will be effective on the second monthly anniversary of the Billing Date following expiry of the notice period. You must pay:

- (a) Any fees or charges incurred up to the date on which your termination takes effect; and
- (b) Any outstanding amounts owed to Simpro under this Agreement.

19.6. **Termination for Breach:** Simpro may suspend or terminate usernames and passwords, accounts, use of the Software and/or terminate this Agreement if you breach this Agreement or if your User breaches the End User Licence Agreement or Acceptable Use Policy and, if the breach is remediable, such breach has not been remedied within fifteen (15) Business Days of providing you with written notice of such breach.

19.7. **Survival:** Any clause capable of surviving termination or expiration of this Agreement, shall survive such termination or expiration. Such clauses include, but are not limited to clauses 7, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26 and 27.

20. Dispute Resolution

20.1. If any dispute, controversy or Claim arising out of or in relation to this Agreement, including with regard to the Agreement's existence, validity or termination, arises then you and Simpro agree to notify each other of the details of each matter in dispute, any amount claimed and the full details of the reasons why each matter is disputed.

20.2. If the dispute involves an error in the Services, Simpro shall attempt to identify and correct the error in accordance with this Agreement.

20.3. If the dispute cannot be resolved to the satisfaction of either party within sixty (60) days, then a director from each party (or other senior representative of the parties with authority to settle the dispute) will, within ten (10) Business Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

20.4. You and Simpro agree that any error, dispute or proceedings, transcripts, statements, documents, discovery, correspondence or any and all other non-public information related to the error or dispute shall be treated as confidential in accordance with clause 17.

20.5. Nothing in this Agreement shall prevent a party from seeking urgent injunctive relief from the courts in the place of your residence.

20.6. Pending resolution of a dispute, the parties shall continue to perform their respective obligations under this Agreement.

21. Australia

21.1. **General:** If you reside within Australia the following clauses apply to you and to the extent of any inconsistency, these terms shall prevail.

21.2. Definitions:

- (a) "Related Entities" has the meaning set out in the *Corporations Act 2001 (Cth)*

21.3. GST

- (a) All sums payable under this Agreement are exclusive of any GST chargeable on the supplies for which such sums (or any part of them) are the whole or part of the consideration for GST purposes.

- (b) Where, under this Agreement, any party makes a supply to any other party ("Recipient") for GST purposes and GST is or becomes chargeable on that supply for which the supplying party is required to account to the relevant tax authority, the Recipient shall, subject to the receipt of a valid tax invoice, pay the supplying party (in addition to and at the same time as, any other consideration for that supply) the amount of such GST.

- (c) Where any party is required by this Agreement to reimburse or indemnify any other party for any cost or expense, that first party shall reimburse or indemnify the other party for the full amount of the cost or expense, including any GST on that amount, except to the extent that the other party is entitled to credit or repayment for that GST from any relevant tax authority.

21.4. Disclaimers and Limitations

- (a) Nothing in this Agreement shall exclude any condition, representation, warranty, guarantee or liability that cannot be excluded as a matter of law, including but not limited to those contained in the Australian Consumer Law to the extent that they apply (together, the "Non-Excludable Conditions").

(b) Simpro's liability arising from the breach of a Non-Excludable Condition shall at Simpro's discretion, be limited to and completely discharged by any one or more of the following:

(i) If the liability relates to the supply of goods:

- (1) The replacement of the goods or the supply of equivalent goods;
- (2) The repair of the goods;
- (3) The payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (4) The payment of the cost of having the goods repaired;

(ii) If the liability relates to the supply of services:

- (1) The supplying of the services again; or
- (2) The payment of the cost of having the services supplied again.

21.5. Governing Law

This Agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of Queensland, Australia and subject to this Agreement, the parties agree to submit to the exclusive jurisdiction of the courts of that State.

21.6. Notices:

- (a) All electronic notices must be provided to Simpro by email at accounts@simpro.com.au.
- (b) All other notices must be addressed and provided to Simpro at Building 17, Garden City Office Park, 2404 Logan Road, Eight Mile Plains, Queensland, 4113, Australia.

22. United States of America

22.1. General: If you reside in the United States of America, the following clauses apply to you and to the extent of any inconsistency, these terms shall prevail.

22.2. Definitions:

(a) "Related Entities" means with respect to the applicable party, any corporation, company, partnership, trust, sole proprietorship or other entity or individual (each, an "Entity") which: (a) is owned or controlled by such party; (b) owns or controls such party; or (c) is under common ownership or control with such party. "Own" means ownership of more than fifty percent of the voting securities, membership interest or other interest in the Entity, either directly or through a subsidiary relationship. "Control" means the power to manage or direct the affairs of the Entity, either directly or through a subsidiary or contractual relationship.

22.3. Compliance with Export Laws:

(b) Each party shall not use, export or re-export without compliance with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services including, without limitation, the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. parts 120-130 (2010)); the Export Administration Regulations ("EAR") (15 C.F.R. parts 730-774 (2010)); the U.S. anti-boycott regulations, including those under the EAR and U.S. Department of the Treasury regulations; and the various economic sanctions regulations of the U.S. Department of the Treasury, Office of Foreign Assets Control. You represent, on behalf of yourself and your employees, agents and contractors, that you are not a person listed on the Specially Designated Nationals and Blocked Persons list maintained by the U.S. Treasury, Office of Foreign Assets Control, the Denied Persons or Denied Entities lists maintained by the U.S. Department of Commerce, Bureau of Industry and Security, the Debarred Persons List maintained by the U.S. Department of State, Office of Defense Trade Controls, any successors to the foregoing; or any similar lists maintained by any agency of the United States government. You will ensure that no person who has access to Simpro's Confidential Information is listed on any of the foregoing lists. You further represent that you do not engage in: (A) prohibited dealings or transactions with any persons on the foregoing lists; and (B) dealings or transactions which would cause you to be in violation of any embargo law.

(c) You represent, warrant and covenant that to the extent a Foreign Person accesses the Services or any information provided in connection with this Agreement, You will: (A) obtain prior written consent from Simpro; and (B) comply with all U.S. laws governing exports and re-exports, including EAR and ITAR. As used in this Section, a "Foreign Person" has the same meaning as "Foreign National" as defined in EAR and "Foreign Person" as defined in ITAR, as applicable.

22.4. Anti-Corruption:



Simpro Terms and Conditions

You represent, warrant and covenant that you and no agent, affiliate, employee or other person associated with or acting on behalf of you, directly or indirectly: (i) has previously provided or will provide anything of value in the form of any unlawful contribution, gift, entertainment or other unlawful expense to any foreign official or foreign political party for the purpose of gaining or retaining business or obtaining any unfair advantage; (ii) has violated any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended ("FCPA") (15 U.S.C. 78dd-1, and 78dd-3 (1977) (as amended 1998)); or (iii) made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment. Without limiting or waiving Simpro's other remedies available under this Agreement or at law, you will, at Simpro's option, pay to Simpro an amount equal to any monetary payment or thing of value provided to a third party in violation of this Section.

22.5. DISCLAIMER OF WARRANTIES:

EXCEPT AS EXPRESSLY STATED OTHERWISE, SIMPRO MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SERVICES AND ANY OTHER SUBJECT MATTER OF THIS AGREEMENT, AND SIMPRO HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

22.6. Governing Law and Jurisdiction:

The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to any conflicts of law principles that would require the application of the laws of any other jurisdiction. The parties hereby consent to the exclusive jurisdiction of the federal and state courts in Denver, Colorado and agree to accept the service of process of such courts such that any suit brought by either party against the other party for claims arising out of or related to this Agreement shall be brought in the federal and state courts located in Denver, Colorado.

22.7. Attorney's Fees:

If any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its actual attorneys' fees and court costs from the non-prevailing party.

22.8. WAIVER OF JURY TRIAL:

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT.

22.9. Notice:

- (a) All electronic notices must be provided to Simpro by email at accounts.us@simpro.us.
- (b) All other notices must be addressed and provided to Simpro at 329 Interlocken Pkwy. Suite 100, Broomfield, CO 80021.

23.

24. United Kingdom and Ireland

24.1. General: If you reside in the United Kingdom or Ireland, the following clauses apply to you and to the extent of any inconsistency, these terms shall prevail.

24.2. Definitions:

- (a) "Related Entities" means any business entity from time to time controlling, controlled by, or under common control with, either party.
- (b) "Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

24.3. VAT and Taxes

- (a) All sums payable under this Agreement are exclusive of any VAT chargeable on the supplies for which such sums (or any part of them) are the whole or part of the consideration for VAT purposes.
- (b) Where, under this Agreement, any party makes a supply to any other party ("Recipient") for VAT purposes and VAT is or becomes chargeable on that supply for which the supplying party is required to account to the relevant tax authority, the Recipient shall, subject to the receipt of a valid VAT invoice, pay the supplying party (in addition to and at the same time as, any other consideration for that supply) the amount of such VAT.
- (c) Where any party is required by this Agreement to reimburse or indemnify any other party for any cost or expense, that first party shall reimburse or indemnify the other party for the full amount of the cost or expense, including any VAT on that amount,

except to the extent that the other party is entitled to credit or repayment for that VAT from any relevant tax authority.

- (d) All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase or import of the Products shall be your responsibility and for your account.

24.4. Data Protection:

- (a) In this clause “Data Protection Legislation” shall mean the Data Protection Act 2018 (UK) and the General Data Protection Regulation (UK) (“GDPR”) (as applicable) and any other laws relating to the protection of personal data and the privacy of individuals.
- (b) In addition to each party’s obligations under clause 14 (Your Data), both parties will comply with all applicable requirements of the Data Protection Legislation, this clause 24.4 and the Personal Data Protection Notice, which you agree forms part of this Agreement. A copy of the Personal Data Protection Notice can be found at <https://www.simprogroup.com/legal> or provided on request.
- (c) You will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Simpro and/or its Related Entities for the duration and purposes of this Agreement.
- (d) Simpro agrees to comply with the Data Processing Addendum found at <https://www.simprogroup.com/legal>.

24.5. Third party rights:

This Agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24.6. Governing Law:

This Agreement shall be governed by and construed in accordance with the laws for the time being in force in England and Wales, and, subject to this Agreement, the parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

24.7. Notice:

- (a) All electronic notices must be provided to Simpro by email at accounts@simpro.co.uk.

- (b) All other notices must be addressed and provided to Simpro at Phoenix House 1 Station Hill Reading, RG1 1NB United Kingdom.

25. New Zealand

25.1. General: If you reside within New Zealand, the following clauses apply to you and to the extent of any inconsistency, these terms shall prevail.

25.2. Definitions:

- (a) “Related Entities” means any Associated Person as that term is defined in section YB of the *Income Tax Act 2007*.

25.3. Consumer Guarantees Act 1993 & Fair Trading Act 1986: If you are using or receiving the Services for the purpose of a trade or business, you acknowledge and agree to contract out of:

- (a) The provisions of the *Consumer Guarantees Act 1993*; and
- (b) Sections 9, 12A, 13 or 14(1) of the *Fair Trading Act 1986*.

25.4. Privacy Act 2020:

SimPRO Software New Zealand Limited located at Level 2, B3, 61 Constellation Drive Rosedale, Auckland 0632 New Zealand and/or its Related Entities, may collect personal information about you or your Users as a result of performing its rights and obligations under this Agreement (refer the Personal Data Protection Notice for more information about the purposes for which the information may be used). This information is stored using our cloud-based system which is accessed by us over the internet. In addition, you agree that any information about you or your Users provided to Simpro and/or its Related Entities may be used by Simpro and its Related Entities at any time for any purposes connected with its business. You have rights to access and correct your personal information under the *Privacy Act 2020*.

25.5. Governing Law

This Agreement shall be governed by and construed in accordance with the laws for the time being in force in Auckland, New Zealand and, subject to this Agreement, the parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

25.6. Notice

- (a) All electronic notices must be provided to Simpro by email at accounts@simpro.co.nz.

- (b) All other notices must be addressed and provided to Simpro at Level 2, B3, 61 Constellation Drive Rosedale, Auckland 0632 New Zealand

26. Elsewhere in the World

26.1. General: If you reside outside of the United States, United Kingdom, Ireland, New Zealand or Australia, the following clauses apply to you and to the extent of any inconsistency, these terms shall prevail.

26.2. Definitions:

- (a) "Related Entities" means with respect to the applicable party, any corporation, company, partnership, trust, sole proprietorship or other entity or individual (each, an "Entity") which: (a) is owned or controlled by such party; (b) owns or controls such party; or (c) is under common ownership or control with such party. "Own" means ownership of more than fifty percent of the voting securities, membership interest or other interest in the Entity, either directly or through a subsidiary relationship. "Control" means the power to manage or direct the affairs of the Entity, either directly or through a subsidiary or contractual relationship.

26.3. Intellectual Property Rights

Simpro reserves and shall retain its entire right, title and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software, subject to the licence expressly granted to you in this Agreement. You covenant and agree to safeguard all Software from infringement, misappropriation, theft, misuse or unauthorized access.

26.4. Disclaimer of Liability

IN NO EVENT WILL SIMPRO OR ITS RELATED ENTITIES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS OR VENDORS, BE LIABLE TO YOU FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SERVICES. YOU ARE PROVIDED THE SERVICES SOLELY FOR YOUR BENEFIT AND AT YOUR DISCRETION. YOU ACKNOWLEDGE THAT YOU HAVE NO RIGHTS UNDER THIS AGREEMENT INCLUDING ANY RIGHTS TO ENFORCE ANY OF ITS TERMS. ANY OBLIGATION OR LIABILITY SIMPRO OR ITS RELATED ENTITIES, OR ANY OF ITS OR THEIR LICENSORS, SERVICE PROVIDERS OR VENDORS, MAY HAVE WITH RESPECT TO

YOUR USE OR INABILITY TO USE SERVICES SHALL BE SOLELY TO YOU AND SUBJECT TO ALL LIMITATIONS OF LIABILITY SET FORTH HEREIN.

26.5. Governing Law

This Agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of Queensland, Australia and subject to this Agreement, the parties agree to submit to the exclusive jurisdiction of the courts of that State.

26.6. Notice:

- (a) All electronic notices must be provided to Simpro by email at general.counsel@simprogroup.com.
- (b) All other notices must be addressed and provided to Simpro at Building 17, Garden City Office Park, 2404 Logan Road, Eight Mile Plains, Queensland, 4113, Australia.

27. General

- 27.1. **Marketing.** You agree that, while you are a Simpro customer, we can use your name and/or logo in our marketing and promotion materials, collateral, presentations and publications.
- 27.2. **Notice.** Simpro may give notice by means of electronic mail to your email address specified in the Proposal or on record in your Account or by written communication sent by post to your address in the Proposal or on record in your Account. Such notice will be deemed to have been given upon the expiration of five (5) Business Days after mailing or twelve (12) hours after sending (if sent by email), or, if earlier, when received. A party may, by giving notice, change its applicable address, email, or other contact information.
- 27.3. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.
- 27.4. **No Agency.** No joint venture, partnership, employment, or agency relationship exists between you and Simpro as a result of this Agreement or use of the Service.
- 27.5. **As Principal.** Simpro is entering into this Agreement as principal and not as agent for or on behalf of any other Simpro entity.
- 27.6. **No Waiver.** The failure of Simpro to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by Simpro in writing.
- 27.7. **Force Majeure.** Subject to your payment, and excluding a party's inability to pay debts as they come due, if the performance of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, failure by a third party hosting provider or utility provider, interruption or failure of the Internet or any utility service, loss of power, or denial of service attack, pandemics, epidemics, quarantines, stay-at-home and similar orders, act of God or any other causes beyond the reasonable control of such party, that party will be excused from such to the extent that it is prevented, hindered or delayed by such causes.
- 27.8. **Assignment.** Except for an assignment to a Related Entity where the Related Entity assumes all the rights and responsibilities of the assignor, this Agreement may not be assigned by either party without the prior written approval of the

non-assigning party, provided that Simpro may assign this agreement to (i) a Related Entity of Simpro, (ii) an acquirer of all or substantially all of Simpro's assets involved in the operations relevant to this Agreement; or (iii) a successor by merger or other combination. Any purported assignment in violation of this Section will be void. This Agreement may be enforced by and is binding on permitted successors and assigns.

- 27.9. **Entire Agreement.** This Agreement, together with the Proposal and any applicable schedule or document incorporating these Simpro Terms and Conditions of Service by reference comprise the entire agreement between you and Simpro and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. To the extent of any inconsistency between a Proposal, SOW, these Simpro Terms and Conditions of Service and any other document, these Simpro Terms and Conditions of Service prevail unless expressly stated otherwise.
- 27.10. **Exclusion of CISG.** The application of the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from this Agreement.

Schedule A

Service Level Schedule

1. **Service Level:** Subject to point 3 below, Simpro shall ensure that the Software has no less than 99.5% Uptime (as defined below). "Uptime" means the Software is operational and is available to communicate with the internet in Simpro's server location (which may be at a co-location facility).
2. **Remedy:** If the level of Uptime is not provided in a calendar month of Services, as Customer's sole and exclusive remedy for the same, the affected Customer will be entitled to a credit (subject to the applicable procedures in this Agreement) as set forth below. Credits may only be used towards future invoices from Simpro, are non-transferable and shall not entitle Customer to a cash refund of any kind, even if the Agreement is terminated or expires before use of all of Customer's credits.

Uptime	Level	Available Credit
99.0% to < 99.5%		Credit equal to 6% of monthly fees for the affected Software
98.5% to < 99.0%		Credit equal to 7% of monthly fees for the affected Software
98.0% to < 98.5%		Credit equal to 8% of monthly fees for the affected Software
97.5% to < 98.0%		Credit equal to 9% of monthly fees for the affected Software



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- Below 97.5% Credit equal to 10% of monthly fees for the affected Software
- Downtime caused by any of the following are excluded from the calculation of Uptime: (a) scheduled maintenance or downtime, (b) modifications or alterations of the Software made by any individual or entity other than Simpro or its authorised agents; (c) violation of the Agreement by Customer or its Users; (d) unavailability that cannot be reasonably recreated by Simpro; (e) Customer's failure to comply with the documentation published for the Software; (f) Customer's or its Personnel's or a third party's hardware, software or other technology; (g) suspension or termination of Customer's rights of use in accordance with the Agreement and/or (h) failures due to Force Majeure events (see above).
 - Simpro disclaims all liability for Customer's or its Users' inability to access the Software for reasons outside Simpro's reasonable control. For example, due to problems with software, hardware, telecommunications, or networking equipment located in Customer's or its Users' facilities, including internet connection and power supply.
 - These service level obligations commence after the first full calendar month of the applicable Service being both in production and invoiced in full by Simpro.

Schedule B

Support Schedule

All capitalised terms used herein shall have their definitions from the Agreement of the "Definitions" section below.

1. Support Services

Support Services consist of (a) Account Management, (b) Upgrades, (c) Error Correction, and (d) Feature Requests.

2. Account Management

Licensor may assign a Customer Success Manager to serve as Customer's point of contact. The Customer Success Manager will be available to answer Customer's questions and advise on how to get the most value from Simpro's service. Named contacts from Customer may contact the Customer Success Manager via email and phone during Simpro's business hours.

3. Upgrades

During the Term, if Simpro releases any Upgrades to the Software, it shall, pursuant to a mutually agreed-upon schedule, make available and install such Upgrades in the Software being used by Customer. Notwithstanding the foregoing, nothing

herein shall require Simpro to release Upgrades to the Software. All Upgrades shall be considered within the definition of Software under the Agreement, and licensed pursuant to the terms of the Agreement.

4. Error Correction

All Errors shall be reported to Simpro by emailing:

(a) For United States or Canada: support.us@simpro.us;

(b) For United Kingdom and Ireland: support@simpro.co.uk;

(c) For New Zealand: support@simpro.co.nz;

(d) For Australia and elsewhere in the world: support@simpro.com.au;

or by submitting a ticket through the Support Center. Licensor shall use all commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by Simpro.

Priority 1 Errors - Simpro shall (i) within two (2) business hours provide an Initial Response and initiate Management Escalation; and (ii) provide Customer with a Status Update within two (2) business hours of the Initial Response if Simpro cannot resolve the Error.

Priority 2 Errors - Simpro shall (i) provide an Initial Response within four (4) business hours; (ii) initiate Management Escalation within twelve (12) hours; and (iii) provide Customer with a Status Update within twenty-four (24) hours if Simpro cannot resolve the Error.

Priority 3 Errors - Simpro shall (i) provide an Initial Response within one (1) Business Day; (ii) initiate Management Escalation within three (3) Business Days; and (iii) provide Customer with a Status Update within three (3) Business Days if Simpro cannot resolve the Error.

If Simpro believes that a problem reported by Customer may not be due to an Error in the Software, Simpro will notify Customer of the same. At that time, Customer may: (1) instruct Simpro to proceed with problem determination at Customer's expense as set forth below; or (2) instruct Simpro that Customer does not wish the problem pursued at its expense. If Customer requests that Simpro proceed with problem determination at its expense and Simpro determines that the error was not due to an Error, Customer shall pay Simpro, at Simpro's then-current and standard consulting rates for all work performed in connection with such determination, plus reasonable out-of-pocket related expenses actually and directly incurred in connection therewith. Customer shall not be liable for problem determination or repair to the extent problems are due to Errors in the Software. If



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Customer instructs Simpro that it does not wish the problem pursued at its possible expense or if such determination requires effort in excess of Customer's instructions, Simpro may, at its sole discretion, elect not to investigate the error with no liability therefor.

5. New Features

Customer may submit requests for new features through its Success Manager, and if acceptable, Simpro shall be engaged and services performed pursuant to a Statement of Work under the Agreement. All new features shall be considered within the definition of Software under the Agreement, and licensed pursuant to the terms of the Agreement. Licensor will inform Customer, using commercially reasonable efforts, of the status of the development of the requested feature. If Simpro does not plan to build the requested feature, or if it plans to build the feature but on a timeline that is not acceptable to Customer, Simpro may, at its discretion, offer Customer the option to accelerate the development of the feature for a cost. Costs for accelerated feature development will depend on the feature being developed, and may include time, materials and licensing fees and shall be approved in advance by Customer.

6. Exclusions

Licensor shall have no obligation to support or provide maintenance with respect to or in the case of: (i) altered or damaged Software, Third Party Software or Hardware by a party other than Simpro; (ii) problems with the Hardware, Third Party Software or Third Party Implementation Services; (iii) problems with the Software caused by Customer's negligence, abuse or misapplication or use of Software other than as specified in Simpro's user manual or as approved by Simpro; (iv) other causes beyond the reasonable control of Simpro. Licensor shall have no liability for any changes in Customer's hardware or software systems that may be necessary to use the Services due to a Workaround or maintenance.

7. Definitions

"Business Hours" are from 9 a.m. to 9 p.m., Australian Eastern Standard Time, Monday through Friday, excluding holidays.

"Email support" means ability to make requests for technical support assistance by email at any time (with reasonable efforts by Simpro to respond within one (1) Business Day) concerning the use of the then current release of the Software.

"Initial Response" means the first contact by a Support Engineer after the incident has been logged and a ticket generated.

"Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of Simpro management that such Errors

have been reported and of steps being taken to correct such Error(s).

"Priority 1 Error" means an Error that renders the Software completely inoperative E.g. Customer or Users cannot access the Service due to unplanned service downtime.

"Priority 2 Error" means Customer or Users can access the Software, however one or more significant features are unavailable.

"Priority 3 Error" means any other error that does not prevent the Customer or Users from accessing a significant feature of the Software.

"Error" means a Priority 1 Error, Priority 2 Error and Priority 3 Error.

"Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.

"Upgrades" means, other than routine bug fixes and updates, additional software added to the Software that provides new functionality or modules to the Software.

"Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Software.