

These Terms and Conditions apply to the Simpro Payments powered by Stripe services supplied by Simpro.

1. Definitions and interpretation

1.1. Definitions

In these Terms and Conditions, unless the context requires otherwise:

Account means an account on any Simpro Payments powered by Stripe platform that is opened by Simpro on behalf of the Customer.

Agreement means the agreement constituted between Simpro and the Customer comprising the Registration Form, these Terms and Conditions and the Stripe Services Agreement.

Bank Account means an account held by the Customer with a bank or authorised deposit-taking institution.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place in which an obligation is to be performed or a notice is to be received.

Chargeback means any chargeback, refund, rebate, reversal and associated charge, fee, fine or penalty that is incurred by or imposed on the Customer or Simpro as a result of any Transaction, use of the Services or activity in connection with the Account.

Commencement Date means the earlier of:

- a. the date the Customer submits a completed Registration Form to Simpro and accepts both these Terms and Conditions and the Stripe Services Agreement; and
- b. the Customer's first use of the Services.

Confidential Information of a party means any information marked as confidential or which by its nature the other party knows or ought to know is confidential (regardless of the form of the information and when it was acquired) and includes trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, knowhow, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party. However, Confidential Information does not include any such information to the extent that the information is in the public domain other than through a party's breach of the Agreement or to the extent that the information was already in the possession of the recipient other than as a result of a breach of confidence.

Consequential Loss means:

- a. loss of revenue, profits or savings (actual or anticipated);

- b. loss of contracts or opportunities;
- c. loss of, or damage to, goodwill or reputation;
- d. loss arising from damage to credit rating or increased financing costs;
- e. loss of data or corruption of data;
- f. loss arising from business interruption or loss or damage resulting from wasted managed time; and
- g. any indirect, special, economic, incidental or consequential loss or damage, howsoever arising, whether based in contract (including under any indemnity), in tort (including negligence), in equity, under the provisions of any law or otherwise.

Control in relation to an entity, means the capacity to determine the outcome of decisions about the entity's financial and operating policies.

Customer means the person, entity or organisation specified in the Registration Form.

Customer Admin means the person who manages access to the Services on behalf of the Customer.

Customer Hardware means any hardware, equipment, infrastructure or system used to access the Services.

Customer Software means any software used by the Customer, but excluding the Services and any other software supplied to the Customer by Simpro.

Customer Users means directors, officers, employees, agents, contractors or representatives of the Customer, including the Customer Admin.

Data means any data, content or information that is collected, used, managed, shared, disclosed or stored through or in connection with the Services, the Account or any Transaction, including Personal Information.

Data Protection Requirements means any legislation, regulation, statute or order, which may apply from time to time, relating to the collection, storage or use of Personal Information including (without limitation) the Australian Privacy Act 1988 (Cth), the Australian Privacy Principles, the UK Data Protection Act 2018, the European Union General Data Protection Regulation, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Data Protection (Processing of Sensitive Personal Data) Order 2000.

Fault means any fault which adversely affects the operation of the Services in a material way.

Fees means the fees specified [here](#) as amended by Simpro from time to time in accordance with these terms.

Force Majeure Event means any event which prevents a party from performing, or delays the performance of, any of its obligations under the Agreement and which is beyond the control of the affected party, including (without limitation):

- a. a force of nature (e.g. fire, storm or explosion) or act of God;

- b. any strike, lockout, industrial action, war, sabotage, riot, act of terrorism, denial of service attack, insurrection, civil commotion, national emergency, epidemic, quarantine, radiation or radioactive contamination;
- c. any action or inaction by a Government Agency;
- d. a change in law;
- e. a breakdown of plant, machinery, equipment or telecommunications or shortages of labour, transportation, fuel, power, plant, machinery, equipment or material (including short supply from the regular source or supplier); or
- f. a Supplier Failure.

Fraud and/or Fraudulent means anything that is dishonest, deceitful, unauthorised, illegal, criminal, wrongful, false or erroneous.

Goods means any goods or services sold by the Customer through the Services.

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.

GST means goods and services tax, or any comparable sales or value added tax or similar tax on sales or supplies in any applicable jurisdiction.

Guest means any customer of the Customer.

Guest Data means all Data relating to Guests.

Indemnify means to indemnify, defend and hold harmless.

Insolvency Event means, in relation to a party, where:

- a. a receiver, manager, trustee, administrator, other controller or similar official is appointed over any of the assets or undertaking of the party;
- b. the party suspends payment of its debts;
- c. the party is unable to pay its debts when they are due;
- d. the party enters into or resolves to enter into any arrangement, composition or compromise with a creditor;
- e. the party ceases to carry on business;
- f. any action is taken to appoint an administrator;
- g. an application, order or action is made / taken for the winding up or dissolution of the party, otherwise than for the purpose of an amalgamation or reconstruction;
- h. a party is presumed to be insolvent under any applicable statute, or threatens to do any of (a) – (g); or
- i. any similar or corresponding application or process is made, planned or threatened in any other jurisdiction in which the Services are provided or the Customer is located.

Intellectual Property Rights means all categories of intellectual property rights, including:

- a. patents, copyright, rights in circuit layouts, registered and unregistered designs, trade marks, domain names, business names and any right to have confidential information kept confidential; and
- b. any application or right to apply for registration of any of the rights referred to in paragraph (a).

Interest Rate means 9% per annum.

Loss means any loss, damage, cost, expense or liability.

Malware means any malware, spyware, bug, virus, Trojan horse, worm, harmful code, vulnerability, systems attack or security threat.

Payment Services Provider means any bank, payment network or other financial institution that is involved in the provision of the Services or Stripe Services.

Personal Information means any information relating to an identified or identifiable natural person.

Privacy Policy means Simpro's privacy policy located [here](#), as amended from time to time.

Process means any operation or set of operations, whether or not by automated means, such as collection, recording, structuring, storage, adaptation or alteration, retrieval, consultation, use, handling, disclosure by transmission, dissemination or otherwise making available, alignment or combination, transfer, restriction, erasure or destruction.

Registration Form means a registration form provided by Simpro to the Customer through which the Customer registers to receive the Services.

Related Bodies Corporate means in relation to any entity, a company that Controls the entity, a company that is under the Control of the entity, or is Controlled by the same company that Controls the entity.

Services means the payment processing services enabling the Customer to accept credit and debit card payments from and process Chargebacks to Guests.

Simpro means Simpro Software Pty Ltd and its Related Bodies Corporate.

Stripe means:

- a. for any Customer principally located in Europe, Middle East or Africa – Stripe Payments Europe, Ltd., a private company organized under the laws of Ireland with offices at The One Building, 1 Grand Canal Street Lower, Dublin 2, Ireland and Stripe Payments UK, Ltd., an English company with offices at 211 Old Street, The Warehouse, 7th Floor, London EC1V 9NR;
- b. for any Customer located principally in the United States – Stripe Inc., a Delaware corporation with offices at 185 Beery Street, San Francisco, CA 94107;

- c. for any Customer located principally in Canada – Stripe Payments Canada, Ltd; and
- d. for any other Customer – Stripe Payments Australia Pty Ltd A.C.N. 160 180 343.

Stripe Services means any services provided by Stripe under the Stripe Services Agreement.

Stripe Services Agreement means:

- a. for any Customer principally located in Europe, Middle East or Africa – Stripe Connect Account Agreement (found at <https://stripe.com/gb/connect-account/legal>) and the Stripe Services Agreement (found at <https://stripe.com/gb/ssa>);
- b. for any Customer located principally in the United States – Stripe Connect Account Agreement (found at <https://stripe.com/us/connect-account/legal>) and the Stripe Services Agreement – United States (found at <https://stripe.com/us/ssa>); and
- c. for any other Customer – the Stripe Connect Account Agreement (found at <https://stripe.com/au/connect-account/legal>) and the Stripe Services Agreement – Australia (found at <https://stripe.com/au/ssa>), as modified from time to time.

Supplier Failure means a failure of any equipment, product or service supplied to Simpro by a third party (including Stripe) and required to perform Simpro's obligations under the Agreement.

Term has the meaning given in clause 3.

Terms and Conditions means these terms and conditions.

Transaction means any purchase, sale, order, payment or other transaction made by or on behalf of the Customer or a Guest through the Services or the Account.

1.2. Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- a. the singular includes the plural and conversely;
- b. a reference to a person includes a body corporate, an unincorporated body, enterprise, firm, trust, joint venture, syndicate or other entity and conversely;
- c. a reference to a clause or schedule is to a clause of or schedule to these Terms and Conditions;
- d. "includes" or "including" or words of similar effect are not words of limitation;
- e. a reference to a thing, a service or a right includes a reference to a part of the thing, service or right;
- f. a reference to any party to the Agreement or any other agreement or document includes the party's successors and permitted assigns;
- g. a reference to any legislation or to any provision of any legislation includes any amendment, consolidation or replacement of it, and all regulations and statutory instruments issued under it;
- h. a reference to conduct includes any omission, statement or undertaking, whether or not in writing;
- i. a reference to a party is a party to the Agreement or any person who executes a deed of accession to the Agreement;

- j. if any payment by a party under the Agreement is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day; and
- k. if an obligation must be performed by 2 or more persons it binds them jointly and individually.

2. Agreement

- a. By submitting a Registration Form for or using the Services, the Customer acknowledges that it has read and agrees to these Terms and Conditions and the Stripe Services Agreement.
- b. If there is any inconsistency between these Terms and Conditions and the Stripe Services Agreement, these Terms and Conditions will prevail.

3. Term

The Agreement commences on the Commencement Date and continues until terminated by either party in accordance with clause 15 (**Term**).

4. Account

4.1. Opening an Account

The Customer:

- a. authorises Simpro to open an Account for the Customer and to contact any third party to verify or collect any information required by Simpro, Stripe or a Payment Services Provider to do so;
- b. must ensure that all information provided to Simpro is accurate and complete;
- c. must promptly notify Simpro if there are any changes to the information that the Customer has provided pursuant to this clause 4 and provide updated information to Simpro without delay;
- d. acknowledges and agrees that:
 - i. until Simpro opens an Account for the Customer, the Customer will not be able to use the Services;
 - ii. Simpro may alter the acceptance process for opening an Account as a result of any requirements imposed by Simpro; and
 - iii. Simpro may not be able to open an Account for the Customer and, if so, the Agreement will immediately terminate.

4.2. Access to Account

The Customer:

- a. irrevocably authorises Simpro to:
 - i. access and administer the Account and the Data;
 - ii. integrate the Account with the Services;
 - iii. share Data with Simpro and/or Payment Services Providers to maintain the Account and as otherwise required for the Customer's use of the Services;
 - iv. initiate, undertake, create and manage any Transactions that the Customer has indicated should be undertaken through the Account, including debiting Chargebacks;
 - v. perform any actions identified in the Stripe Services Agreement; and

- vi. request Stripe to deduct any amounts owed to Simpro from the Account or from funds payable to the Customer from any Transactions or Chargebacks processed using the Services or through the Customer's Account; and
- b. acknowledges and agrees that the Account is governed by the rules and procedures set out in the Agreement.

5. Services

5.1. Supply of the Services

- a. Simpro must supply the Services to the Customer for the duration of the Term.
- b. Supply of the Services is conditional on the Customer:
 - i. submitting to Simpro a completed Registration Form;
 - ii. maintaining an eligible Bank Account with sufficient funds to meet its obligations under the Agreement; and
 - iii. at all times complying with the Agreement.

5.2. Use of the Services

- a. The Services are for the Customer's use only and may only be used in accordance with the Agreement.
- b. The Customer is solely responsible for the:
 - i. use of the Services by the Customer Admin and Customer Users; and
 - ii. Goods, including delivery, support, returns and refunds.
- c. The Customer must:
 - i. maintain the technology systems and services necessary to access and use the Services;
 - ii. comply with all operational procedures, technical specifications and reasonable directions given by Simpro or Stripe to protect and secure the Services;
 - iii. not attempt to circumvent any of the technical limitations of, enable any functionality that is disabled or prohibited in, or otherwise interfere with the ordinary operation of, the Services;
 - iv. not republish, post, transmit, upload, resell or distribute, reproduce or copy the Services or any documentation related to the foregoing, in whole or in part, except for backup and archive purposes;
 - v. provide Simpro with prompt access to the Customer's personnel, equipment, data and information as is reasonably required to enable Simpro to provide the Services;
 - vi. not do, or omit to do, anything which the Customer is aware or ought reasonably to be aware, could have an adverse effect on the operation or maintenance of the Services;
 - vii. provide all consumer disclosures required by applicable laws;
 - viii. maintain a fair return, refund, cancellation or adjustment policy and clearly describe the process by which a Guest can take advantage of these policies;
 - ix. comply with all of its obligations in any Stripe Services Agreement. However, if the Customer does not comply with any of its obligations in any Stripe Services Agreement, the Customer:
 - A. authorises Simpro to fulfill those obligations on behalf of the Customer;

- B. will provide any assistance, cooperation or information that is requested by Simpro in order for Simpro to fulfill those obligations; and
- C. will Indemnify Simpro, its Related Bodies Corporate and each of their directors, officers, employees and representatives from and against any and all Losses that are incurred by Simpro in connection with Simpro fulfilling those obligations;
- x. promptly notify Simpro in the event that a Stripe Services Agreement is terminated for any reason;
- xi. provide Simpro with all information, assistance and co-operation reasonably requested by Simpro in order to enable Simpro to meet its obligations under the Agreement;
- xii. use the Services in compliance with all applicable laws or directions of Government Agencies; and
- xiii. not use the Services:
 - A. to sell Goods in a Fraudulent manner;
 - B. for any improper or unlawful purpose, including for the benefit of any entity, person, country or organisation that is embargoed or blocked by any Government Agency;
 - C. to initiate or facilitate Fraudulent Transactions or permit others to do the same or use the Services for non-commercial, personal or household purposes;
 - D. to initiate or facilitate peer-to-peer money transmissions or intercompany transactions;
 - E. to act as a pass-through agent for the Services without adding any additional value to Guests;
 - F. to host or transmit information which contains Malware or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or equipment; or
 - G. for any benchmarking or competitive purpose, including to develop a product, service or functionality that competes, in whole or in part, with the Services.

5.3. Transactions

- a. The Customer is solely responsible for, and Simpro has no liability in respect of:
 - i. all Transactions (including verifying their authenticity and accuracy); and
 - ii. verifying the identities of Guests and acquiring any consents and information necessary to process Transactions relating to them.
- b. The Customer, Customer Admin and Customer Users must:
 - i. only initiate Transactions authorised by Guests;
 - ii. advise Guests of the terms and conditions relating to the Transaction;
 - iii. provide Guests with accurate and detailed receipts or tax invoices for each Transaction and keep records of the same; and
 - iv. comply with all card payment regulations, rules and procedures relating to the Transactions.
- c. Simpro may refuse or suspend any Transaction which it believes violates the Agreement or presents an unusual or unacceptable risk.

5.4. Chargebacks

- a. The Customer is solely responsible for, and Simpro has no liability in respect of, Chargebacks.
- b. The Customer may challenge a Chargeback by submitting appropriate evidence to Simpro and Simpro may assist the Customer by coordinating with any Stripe or Payment Services Provider to contest the

Chargeback, but Simpro is not involved in determining the final outcome of the request and cannot guarantee the request will be successful.

- c. The Customer must ensure that the Account has sufficient funds to cover all Chargebacks and acknowledges and agrees that Simpro may set a reserve on Transaction proceeds owing to the Customer to fund Chargebacks.
- d. Simpro may suspend the Services if the Customer fails to fund any Chargeback.

5.5. Security

- a. Simpro must implement and maintain appropriate security controls, processes, systems and procedures to protect the Services against Malware and unauthorised access.
- b. The Customer is solely responsible for the security of any Customer Hardware and Customer Software used to access the Services.
- c. The Customer is solely responsible for the security of any email accounts used to access the Services or communicate with Simpro and acknowledges that Simpro may provide or share, via the same email accounts, any and all information relevant to the Customer and/or the Services, including transaction, billing and financial information, without reference or regard to the persons who may have access to them.
- d. The Customer must implement and maintain appropriate security controls, processes, systems and procedures (including any provided by Simpro or Stripe) to protect the Customer Hardware and Customer Software against Malware.
- e. Simpro may take any measures it deems necessary, including the suspension of the Account, to maintain the security of the Services and the Data, or to prevent harm to Simpro, Simpro's customers, Stripe or any other person or organisation.

5.6. Intentionally Left Blank

5.7. Co-operation on regulatory compliance

The Customer must provide any information requested by Simpro, Stripe or a Payment Services Provider necessary to comply with any regulatory requirements or requests by Government Agencies relating to the Services.

5.8. Suspension

- a. Simpro may suspend the Services if:
 - i. the Customer, the Customer Admin or a Customer User breaches, or is reasonably suspected of breaching, the Agreement;
 - ii. the Stripe Services Agreement or Account is terminated or suspended;
 - iii. Simpro or Stripe determines that the Customer is not eligible to use the Services or the Account; or
 - iv. required by law.
- b. If Simpro suspends the Services pursuant to this clause 5.8, Simpro must notify the Customer within 24 hours.

6. Fees

6.1 Fees

- a. The Customer must pay the Fees to Simpro on each Transaction.
- a. Simpro may adjust the Fees at any time by giving 30 days' prior written notice to the Customer.

6.2 Payment obligations

- a. Simpro (and/or Stripe on Simpro's behalf) may:
 - i. deduct the Fees from any amounts debited in respect of the Transaction prior to payment of Transaction proceeds to the Customer;
 - ii. debit the Fees from the Account; and/or
 - iii. debit the Fees from the Bank Account.
- b. The Customer must also pay to Simpro and Simpro (and/or Stripe on Simpro's behalf) may debit the Account and/or, in accordance with clause 6.7, the Bank Account in respect of:
 - i. any amounts paid on behalf of the Customer in connection with Chargebacks; and
 - ii. any taxes, fees or other amounts imposed by a Government Agency in connection with a Transaction, Chargeback or the Customer's use of the Services.

6.3 Monthly Statements

Simpro may provide the Customer with a monthly statement of the debits and credits made to the Account and Bank Account in respect of Services during the Term (**Monthly Statement**).

6.4 Disputed Monthly Statements

- a. If the Customer disputes any part of a Monthly Statement, the Customer must notify Simpro in writing within 10 Business Days of its receipt of the reasons for disputing it. Failing this, the Customer will be deemed to have accepted it as accurate.
- b. The parties must endeavour to resolve any dispute regarding the Monthly Statement between themselves within 10 Business Days of the notification being provided by the Customer in accordance with clause 6.4(a). Failing this, the dispute resolution procedure set out in clause 19 applies.
- c. Simpro will credit the Account and/or Bank Account (as applicable) for any part of a Monthly Statement that the parties agree, or which is determined under clause 19, has been debited in error.

6.5 GST

- a. All Fees are exclusive of GST unless stated otherwise by Simpro in writing.
- b. If GST is applicable to any supply made by Simpro under the Agreement, Simpro may add to the Fees an amount equal to the GST.
- c. The Customer must pay to Simpro such GST charges in the same manner and at the same time as payment for the relevant Fees.

- d. Simpro will issue tax invoices to the Customer for the purposes of GST in respect of the Fees.
- e. If required by applicable law, Simpro will give the Customer an adjustment note arising from an adjustment event relating to a taxable supply made under, or in connection with the Agreement within 30 days after the date Simpro becomes aware of the adjustment event.

6.6 Direct debit authorisation

- a. The Customer authorises:
 - i. Simpro and/or Stripe to debit the Bank Account, including via the Bulk Electronic Clearing System (BECS), in accordance with clause 6.2, if the net activity or balance in the Account is at any time negative or if Simpro requires the Customer to fund the Account; and
 - ii. the financial institution supplying the Bank Account to accept such debits.
- b. The Customer must ensure that the Bank Account:
 - i. capable of accepting debits and credits by Simpro and Stripe; and
 - ii. has sufficient funds to allow for all debits attempted in accordance with this clause 6.6.
- c. The Customer is responsible for and must pay to Simpro all fees and charges incurred by Simpro as a result of debiting the Bank Account in accordance with this clause 6.6.
- d. If any debit transaction processed by Simpro in accordance with this clause 6.6 is returned as a result of insufficient funds, the Customer must, on demand, immediately fund the Bank Account so that Simpro can re-process the debit transaction successfully.
- e. If the Customer believes that there has been an error relating to a debit transaction from the Bank Account, the Customer must notify Simpro and its bank without delay. Simpro will coordinate with the bank to adjust the Bank Account in the event of an error. If an error is not found, Simpro will notify the Customer of the determination and the rationale for the determination.

6.7 Failure to pay

If the Customer fails to make a payment due under the Agreement when called upon to do so or when Simpro attempts to debit the Account or Bank Account, Simpro may do any one or more of the following either instead of, or in addition to, terminating the Agreement in accordance with clause 15.1:

- a. charge the Customer interest on the overdue amount from the due date for payment up to the date of actual payment or debit at the Interest Rate;
- b. suspend the Services until all amounts due have been paid or debited (including any interest); or
- c. use or disclose (to Stripe, Government Agencies or Payment Service Providers) any Data relating to the Customer as may be necessary or advisable to assist in the process of debt recovery.

7. Customer representations and warranties

The Customer represents and warrants that:

- a. the Customer Admin is duly authorised to provide information requested by Simpro in order to register for and use the Services on behalf of the Customer and to bind the Customer to the Agreement;
- b. it has the authority to execute and perform its obligations under the Agreement; and

- c. it is solvent at the time of entering into the Agreement, will remain so for the duration of the Term and will notify Simpro if it suffers an Insolvency Event.

8. Fraud

- a. The Customer, the Customer Admin and the Customer Users must not use the Services or its Account to initiate, accept, facilitate or support any Fraudulent Transactions or activity, including, but not limited to, accepting payments for Goods not delivered or deliverable.
- c. The Customer is solely responsible for any Losses arising from or in connection with Fraudulent Transactions (including incurred in connection with lost or stolen credentials or log-ins) or activity through or connected to its Account, including any costs incurred by Simpro in its investigation, analysis and resolution of the Fraudulent event.
- d. Simpro may provide or suggest procedures, processes, setting and controls to reduce the risk of fraud (**Fraud Controls**). The Customer must review and implement the Fraud Controls as directed by Simpro.
- e. The Customer must notify Simpro of any suspected Fraudulent activity and provide all reasonable assistance and information requested by Simpro, Stripe or Payment Service Providers in the investigation of any Fraudulent activity engaged in through or connected to its Account.
- f. Simpro and/or Stripe may refuse, condition, delay, suspend or reverse any transactions that are suspected or proven to be Fraudulent (including those related to money laundering, tax evasion, financing of terrorism or the proceeds of crime).
- g. Simpro and/or Stripe may share information related to Fraudulent Transactions with any Payment Services Providers and Government Agencies, including information about the Customer, the Customer Admin and Customer Users and any other relevant information.
- h. If the Services or Account are used for any Fraudulent purpose, or Simpro's fraud and credit risk monitoring programs consider the Customer, the Customer Admin, a Customer User or the Account to pose an unacceptable risk or threat to Simpro, Stripe or any third party, Simpro may immediately suspend and/or terminate the Services and access to the Account.
- i. The Customer agrees to Indemnify Simpro, its Related Bodies Corporate and each of their directors, officers, employees and representatives from and against any and all claims and Losses of whatever nature and however arising as a result of or in connection with this clause 8.

9. Maintenance and suspension

9.1 Maintenance

- a. Simpro may perform scheduled and unscheduled maintenance (including updates) on the Services from time to time.
- b. Simpro must use reasonable efforts to give the Customer notice prior to undertaking any scheduled or unscheduled maintenance. However, the Customer accepts that such prior notice may not always be possible.

9.2 Suspension

Simpro may without liability and with immediate effect suspend the Services for as long as Simpro, acting reasonably, considers it necessary to comply with any law, protect any person, or equipment, enable authorised persons to attend to any emergency or to prevent interference with the Services.

10. Support

10.1 Simpro's support obligations

The Simpro support team will:

- a. deal directly with the Customer's support function regarding basic configuration changes and provide basic support enquiries during local business hours; and
- b. coordinate any reported issues from the Customer regarding any Stripe Services with the applicable Payment Services Provider. However, Simpro is not responsible for providing the support or resolving the issue that is reported regarding any Stripe Services, including with respect to any Supplier Failure.

10.2 Customer's support obligations

- a. The Customer is solely responsible for the provision of support services to Guests or other customers of the Customer, including with respect to any Transactions, Chargebacks, receipts or other issues related to the Goods.
- b. The Customer must not encourage any Guests to seek support from Simpro.

11. Fault reporting and restoration

- a. The Customer must report all Faults to Simpro without delay after becoming aware of them. Simpro must rectify Faults and use reasonable efforts to minimise any interruption to the Services.
- b. Before reporting a Fault, the Customer should check that the Fault is not caused by the Customer Hardware or Customer Software.
- c. Simpro is not responsible for rectifying Faults where the Fault is caused by the Customer, the Customer Admin, the Customer Users, the Customer Hardware or the Customer Software.
- d. The Customer is solely responsible for faults in the Customer Hardware or Customer Software.

12. Personal Information

12.1 Personal Information

With respect to any Personal Information Processed in connection with the Agreement, each party must:

- a. only Process the Personal Information for the purposes of the Agreement or as directed or authorised by the data subject; and
- b. at all times comply with the applicable Data Protection Requirements (including having a lawful basis for such Processing).

12.2 Customer Personal Information

With respect to Personal Information relating to the Customer, the Customer consents to Simpro:

- a. Processing the Personal Information in accordance with its Privacy Policy and for the purpose of supplying the Services and/or Stripe Services, including:
 - i. billing and account management;
 - ii. product and service development;
 - iii. managing the Customer's relationship with Simpro; and
 - iv. marketing Simpro's products and services to the Customer.

- b. sharing the Personal Information with:
 - i. Stripe, the Payment Services Providers and other service providers as required to provide the Services;
 - ii. Government Agencies to assist in the investigation of crime or the enforcement of any laws; and
 - iii. any third party as required by law.

13. Confidentiality

13.1 Confidentiality obligations

Each party (**Recipient**) which receives Confidential Information of the other party (**Disclosing Party**) under the Agreement acknowledges that all Confidential Information provided to it or to which it is exposed is confidential to the Disclosing Party.

13.2 Loss suffered

The Recipient acknowledges and agrees that the Confidential Information is, by virtue of its special nature, valuable property of the Disclosing Party and that the Disclosing Party may suffer Loss by any disclosure by the Recipient of the Confidential Information.

13.3 Non-disclosure

The Recipient must:

- a. treat all Confidential Information as confidential and not make public or disclose to any other person that Confidential Information unless it has first obtained the written consent of Disclosing Party to do so;
- b. prevent third parties from gaining access to the Confidential Information; and
- c. deliver and surrender to Disclosing Party upon request all records of Confidential Information held by it.

13.4 Disclosure required

The Recipient may disclose Confidential Information if required to do so by a Government Agency or any law or court order, or the rules of any applicable securities exchange after first giving notice to Disclosing Party and after taking all practicable steps to cooperate with Disclosing Party to prevent the disclosure to the maximum extent permitted by law.

13.5 Permitted disclosure

- a. Each party may disclose Confidential Information to any of its employees, contractors, or advisers on a need to know basis as long as each such recipient is bound by an obligation of confidence substantially the same as contained in the Agreement.
- b. Simpro may disclose Confidential Information to Stripe or any Payment Services Provider to the extent required for the supply of the Services or as otherwise permitted under the Agreement.

14. Intellectual Property Rights

14.1 Grant of license

Simpro grants the Customer a non-exclusive, non-transferable, non-sublicensable, revocable, royalty-free and limited license to access the Services for the duration of the Term in accordance with the Agreement.

14.2 Ownership

- a. The parties acknowledge and agree that all Intellectual Property Rights which are owned by either party as at the date of the Agreement and during the Term will at all times remain owned by that party and nothing in the Agreement may be construed as transferring ownership of Intellectual Property Rights from one party to another.
- b. Except as provided in clause 14.1, nothing in the Agreement confers on the Customer any right, title or interest in Simpro's Intellectual Property Rights.

14.3 Restrictions on use

The Customer must not:

- a. attempt to assign, sell, transfer, lease, rent or otherwise deal with the Services;
- b. attempt to make any modification, adaptation, improvement, enhancement, translation or derivative work from the Services;
- c. remove, modify or obscure any copyright, trade mark or other proprietary rights notices that are contained in or on the Services;
- d. decompile, reverse engineer, disassemble, decrypt or otherwise attempt to derive source code, the underlying ideas, algorithms, structure or organisation of the Services, and the Customer Indemnifies Simpro from and against all claims of whatever nature and howsoever arising from the Customer's breach of this clause 14.3 or any improper, unlawful or unauthorised use or dealing by the Customer Admin or Customer Users with Simpro's Intellectual Property Rights.

15. Termination

15.1 Termination by either party

Either party may terminate the Agreement:

- a. if the other party has committed a material breach of the Agreement and either:
 - i. the breach is not remedied within 14 days of the date written notice of the breach is served on the breaching party; or
 - ii. the breach is not capable of remedy, (for the purposes of this clause 15.1(a), a failure to pay any amount on the due date for payment is a material breach);
- b. if the other party suffers an Insolvency Event;
- c. in accordance with clause 16.2, if a Force Majeure Event occurs; or
- d. at any time by giving the other party 30 days' prior written notice and, in the case of the Customer, ceasing use of the Services from the date of the written notice, provided that if the Customer recommences the use of the Services at any point, the written notice will be of no effect and the Customer will continue to be bound by the Agreement.

15.2 Termination by Simpro

Simpro may terminate the Agreement immediately if:

- a. the Stripe Services Agreement or access to the Stripe Services is terminated; or
- b. access to the Account is terminated or if the Customer attempts to revoke any authorisation provided to Simpro under clause 4.

15.3 Effects of termination

- a. On termination of the Agreement:

- i. all unpaid sums (including Fees) owing by the Customer to Simpro will become immediately due and payable;
- ii. in addition to any other rights it may have, Simpro may invoice or debit the Customer in respect of any Services provided, any Transactions processed or any Chargebacks incurred prior to the date of termination which have not been invoiced or debited;
- iii. the Customer must cancel any pending Transactions;
- iv. the Customer must cease using the Services to accept any new Transactions;
- v. the Customer must cease using any trade marks, content or logos associated with the Services or Simpro;
- vi. Simpro may delete any Data stored in the Services; and
- vii. the Customer must immediately return to Simpro all Confidential Information of Simpro, all access codes and keys of any type and any other materials in the Customer's possession relating to the Services.

- b. Simpro will not be responsible for any Loss connected to the deletion of Data in accordance with clause 15.3(a)(vi).
- c. The Customer will remain liable for all Fees, Chargebacks and other financial obligations due connection with the Services before or after termination of the Agreement.

16. Force Majeure

16.1 No liability

Where any failure or delay by a party (Affected Party) in the performance of its obligations under the Agreement (excluding payment obligations) is caused, directly or indirectly, by a Force Majeure Event:

- a. the Affected Party must as soon as practicable give the other party written notice of that fact;
- b. the Affected Party is not liable for that failure or delay; and
- c. the Affected Party's obligations under the Agreement are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.

16.2 Termination for Force Majeure Event

If the Force Majeure Event continues for more than 30 consecutive days, either party may terminate the Agreement by giving written notice to the other at any time during which the Force Majeure Event continues.

17. Disclaimers and limitations on liability

17.1 Disclaimers

- a. Simpro provides the Services on an "as is" and "as available" basis without any warranty, condition or guarantee, whether express or implied and specifically disclaims any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement to the maximum extent permitted by law.
- b. To the extent that the supply of the Services to the Customer is considered to be a supply of consumer goods or services to which any implied consumer guarantees apply, subject to applicable laws, Simpro's total liability with respect to a major failure to comply with any implied consumer guarantee will be limited to the resupply of the Services or a refund of the Fees (each limited to a 30 day period and as determined by Simpro in its sole discretion).
- c. The Services are provided subject to the nature and limitations of the Stripe Services and any terms set forth in the Stripe Services Agreement.
- d. Simpro provides no warranties or guarantees with respect to:
 - i. the availability, accuracy or completeness of the Services or Data;

- ii. the Services meeting the Customer's requirements or expectations;
- iii. the Services operating at any particular speed, complying with any particular standard or operating in any particular manner;
- iv. the Customer achieving any profit or other outcome from its use of the Services;
- v. the Services being provided securely without interruption or error;
- vi. the correction of any defects or errors in the Services or Data;
- vii. the Services or Data being free from any viruses or other harmful code; or
- viii. the time required to process Transactions or to pay out any funds in connection with the Services.

17.2 Limitation on liability

- a. Simpro is not liable for any Losses incurred by the Customer in connection or related to:
 - i. any Fraudulent Transaction or Fraud perpetrated by any third party;
 - ii. any unauthorised access or use, hacking or tampering of the Services, the Account or the Data;
 - iii. use of the Services or Stripe Services by the Customer, Customer Admin or Customer Users in a manner that breaches or is otherwise inconsistent with the Agreement;
 - iv. any Malware that may be transmitted to or through the Services or Stripe Services; or
 - v. any errors in or losses to the Data.
- b. To the maximum extent permitted by law and subject to clause 17.1(b), the Customer agrees that the total aggregate liability of Simpro in respect of all claims made under the Agreement is limited to 0.1% of the total volume of Transactions processed by Simpro on behalf of the Customer during the 12 month period preceding the event giving rise to the liability less any Chargebacks related to those Transactions.

17.3 No Consequential Loss

Neither party will be liable to the other for any Consequential Loss however caused in connection with or related to the Agreement or the Services.

17.4 No implied terms

All terms, conditions or warranties which may be implied into the Agreement are excluded to the fullest extent permitted by law.

18. Indemnity

18.1 Indemnity

The Customer agrees to Indemnify Simpro from and against all claims and Losses incurred (including reasonable legal costs) arising as a result of or in connection with:

- a. the Goods;
- b. a breach of the Agreement by the Customer;
- c. Transactions and Chargebacks;
- d. use of the Services by the Customer, the Customer Admin and Customer Users;
- e. negligent or willful misconduct of the Customer, the Customer Admin or the Customer Users and each of their Related Bodies Corporate, directors, officers, employees, contractors, agents and service providers; and
- f. the Data and any other materials that the Customer provides to Simpro or Stripe or uploads using the Services infringing any third party's rights, including any Intellectual Property Rights, proprietary rights or rights to privacy, (each an Indemnity Claim).

18.2 Conditions to Indemnity

The Customer will have no obligation to Indemnify Simpro in respect of an Indemnity Claim under clause 18.1 unless Simpro:

- a. as soon as reasonably practicable after becoming aware of an Indemnity Claim and in any event within 20 Business Days, notifies the Customer in writing of the Indemnity Claim;
- b. makes no admission of liability; and
- c. if requested by the Customer in writing, assigns to the Customer the right to defend or compromise the Indemnity Claim.

19. Disputes

19.1 Dispute resolution prior to litigation

- a. The parties must exhaust the following provisions before initiating any legal proceedings.
- b. When a dispute arises, the disputing party must give a notice in writing to the other party setting out in reasonable detail the nature of the dispute.
- c. The parties must use reasonable endeavours and act in good faith to resolve the dispute notified under subclause (a) by negotiation between a senior manager of each of them.
- d. If senior managers of the parties have not resolved any dispute within 20 Business Days of notification of the dispute, either party may take such additional action as it deems necessary to resolve the dispute, including initiating legal proceedings.

19.2 Interlocutory relief

Nothing in this clause 19 prevents any party from seeking urgent interlocutory relief from a court.

20. General

20.1 No assignment

Neither party may assign its rights and obligations under the Agreement without the prior written consent of the other party.

20.2 Change in Control

If a change in Control occurs in respect of the Customer or the Customer sells a property which is receiving Services under the Agreement, Simpro may terminate the Agreement or the provision of any Services. If the Customer wishes to transfer the Agreement to a new owner of its business or property, it must make a request in writing to Simpro to do so, which Simpro may accept or reject in its sole discretion.

20.3 Notices

- a. A notice or other communication required or permitted to be given by one party to another must be in writing and:
 - i. delivered personally;

- ii. sent by pre-paid mail to the address of the addressee specified in the Agreement; or
- iii. sent by email to an email address previously used or advised by the other party.

- a. A notice or other communication is taken to have been given:
 - i. if delivered personally, immediately upon delivery;
 - ii. if mailed, on the second Business Day after posting; or
 - iii. if emailed, on the date sent, unless the recipient is able to demonstrate that the email failed to be delivered.
- b. The Customer consents to the electronic provision and delivery of all communications, notices and disclosures from Simpro including any communications, notices or disclosures required by applicable law.
- c. A party may change its address for service by giving notice of that change in writing to the other party.
- d. The parties' respective contact details for notification under the Agreement are as set out in the Registration Form.

20.4 Governing law and jurisdiction

The Agreement is governed by the laws of Queensland, Australia and each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland.

20.5 Further assurance

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to the Agreement. Each party acknowledges that it has obtained legal advice, or had the opportunity to obtain legal advice, in connection with the Agreement.

20.6 Variation

Simpro may amend the Agreement or any conditions on the use of the Services at any time and for any reason and Simpro will notify the Customer of any such amendments. The Customer agrees that the amendments will become binding on the Customer in the event that the Customer continues to use the Services after 7 days from the notification being provided to the Customer (or any longer period if required by applicable law).

20.7 Attorneys

Each individual executing the Agreement on behalf of a party, including the Customer Admin, warrants that he or she has full and proper authority to do so and is not aware of any revocation or suspension of the relevant power of attorney or other authorisation.

20.8 Joint and several liability

If the Customer enters the Agreement on behalf of more than one party, such that multiple parties receive Services under the Agreement, each party shall be jointly and severally liable in respect of all Services so provided.

20.9 Whole agreement

The Agreement:

- a. is the whole agreement between the parties; and

- b. supersedes all oral and written communications by or on behalf of any of the parties in relation to the subject matter of the Agreement.

20.10 No reliance on warranties and representations

In entering into the Agreement, each party acknowledges that it has:

- a. not relied on any warranty or representation (whether oral or written) in relation to the subject matter of the Agreement other than as expressly stated in the Agreement; and
- b. relied entirely on its own enquiries in relation to the subject matter of the Agreement.

20.11 Survivability

Each indemnity, in addition to the covenants, conditions and provisions of the Agreement which are capable of having effect after the expiration or termination of the Agreement will remain in full force and effect.

20.12 Severance

If any part of the Agreement is unlawful or unenforceable, it will be severed from the Agreement and the remainder of the Agreement will continue in full force.

20.13 No merger

Nothing in the Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that Simpro may have against the Customer or any other person at any time.

20.14 Relationship

The Agreement does not create any relationship of partnership or employment, franchise, joint venture or agency between the parties or any other entity referenced and Simpro and each Payment Services Provider is an independent contractor.

20.15 Interpretation

A provision of the Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

20.16 No waiver

A delay or failure by a party in exercising a right, power or remedy arising under, or in connection with, the Agreement will not be considered a waiver of such party's right, power or remedy. Any waiver must be in writing and signed by the party granting the waiver and it is only effective to the extent set out in that waiver.