

Simple's Terms and Conditions

Commercial terms

These Terms and Conditions apply to any services offered to a Customer (**you/your**) by Simple Technology (**we, us, our**). An agreement is formed between us when you sign the Term Sheet and accept these Terms and Conditions (**Customer Contract**).

1. Software Services

- 1.1 Subject to your payment of the Fees, we will provide you with the Software Services for the Contract Term, in accordance with the Term Sheet and as otherwise agreed in an Order Form.
- 1.2 The Software Services do not include configuration or other Professional Services.

2. Variation, renewal and cancellation

- 2.1 If you would like to vary any part of the Software Services you have ordered, you must submit an Order Form to us. You can request the following variations using an Order Form:
 - (a) an increase to the number of Authorised Users (in increments of 10). The increase will take effect from the date we accept the Order Form. The Fees for additional Authorised Users will be prorated to the end of the Contract Term;
 - (b) a decrease in the number of Authorised Users for your next Renewal Term. Order Forms must be submitted at least two months before the corresponding Renewal Date; and
 - (c) a variation to the storage capacity and/or number of users of the DAM product or LAM product; or
 - (d) an increase in the number of hours under your Development Retainer (as applicable).
- 2.2 Unless otherwise agreed, the Software Services will continue for the Initial Term and automatically renew for 12-month periods indefinitely (**Renewal Terms**) unless you:
 - (a) cancel your Software Services before the Renewal Point during the Initial Term; or
 - (b) cancel your Software Services at least two months before the Renewal Date during a Renewal Term,
 in which case termination of your Software Services will be effective on the upcoming Renewal Date.
- 2.3 We will contact you at least one month before the Renewal Point to remind you of your upcoming renewal and to notify you of any changes to the Fees.

3. Development Retainer

- 3.1 Where we have agreed to a Development Retainer, we will provide development assistance for the number of hours you have selected and paid for, as set out in the Term Sheet or as otherwise agreed in a Statement of Work, and requested by an Order Form.

4. Technical Support

- 4.1 If you request us to provide you with Technical Support we will do so in accordance with the SLA. To facilitate our provision of Technical Support you must comply with the Technical Access Provisions.
- 4.2 We will not be liable for any failure or delay in performing the Technical Support if the failure or delay was caused by you.
- 4.3 Unless otherwise agreed, we will invoice you in advance for the Technical Support at the same time and for the same period as the Software Services and you must pay the Fees as set out in the Customer Contract.

5. Obligations

- 5.1 You must comply with the User Access Provisions and the Licencing Provisions at all times.
- 5.2 You are responsible for ensuring you have the system requirements, including software, hardware or third-party licenses required to configure and access the Platform.
- 5.3 We will make Updates to the Platform in accordance with the Update Provisions.

6. Third-party products or Services

- 6.1 You may be required to use third-party products and services in order to access, configure, implement or customise the Platform (including incorporating such products and services into the Platform).
- 6.2 You acknowledge that any third-party products or services may be subject to separate fees and terms issued by the third-party supplier, which will form a separate agreement between you and the third-party supplier.
- 6.3 We make no representations or warranties in relation to, and do not accept any liability for, any third-party products or services or any interruptions to your use of the Platform resulting from any outage of such third-party products or services.
- 6.4 You are solely responsible for the exchange of data between you and any third-party products or services.

7. Fees

- 7.1 You agree to pay the Fees set out in the Customer Contract, on the following basis:
 - (a) for the Initial Term, we will invoice you on the Start Date for the Fees, and you will pay the fees 30 days following the date of invoice;
 - (b) for any Renewal Terms, we will invoice you for the Fees 30 days before the Renewal Date and you will pay the Fees by the Renewal Date; and
 - (c) where we agree on an Order Form to amend any part of our Services, we will invoice you for the applicable additional Fees, prorated from the date Simple accepts the Order Form, which will be due 30 days from the date of invoice.
- 7.2 Unless otherwise specified, all Fees other sums payable or consideration to be provided under the Customer Contract or this agreement are in Australian dollars and are exclusive of GST. If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in this agreement plus GST.

8. Termination

- 8.1 You may terminate the Customer Contract in the event of a breach by us of a material term where you have provided notice of such breach and we have failed to remedy that breach within 2 months of the date of the notice.
- 8.2 We may suspend or terminate the Customer Contract if you breach any of the terms of this agreement, and you agree to forfeit any Fees already paid to us.
- 8.3 Upon termination, suspension or expiration of the Customer Contract, the Termination Provisions will apply, and will survive termination of the Customer Contract.

9. Professional Services Terms and Conditions

- 9.1 We may provide you with Professional Services as set out in a SOW and subject to these terms and conditions.
- 9.2 We will use all reasonable commercial efforts to complete the Professional Services within any estimated timeframe and with due care, competence and diligence.
- 9.3 In order for us to perform the Professional Services you must provide us with (as reasonably requested by us) all relevant information and comply with Technical Access Provisions.
- 9.4 You acknowledge we are entitled to rely on the accuracy of the information provided to us without independently verifying it, whether the information is provided by you, your Associates, or your advisers.
- 9.5 If there is delay arising from your untimely performance of any of your obligations under this Customer Contract:
 - (a) we will not be liable for any failure or delay in performing the Professional Services;

- (b) you must pay additional fees for the increase in time and effort in performing the Professional Services; and
- (c) if the delay is substantial, we may elect to terminate this Customer Contract on notice to you.

Legal terms

10. Limitation of liability

- 10.1 You are responsible for determining whether the Platform is suitable for your needs.
- 10.2 If any supply by us pursuant to this agreement comprises a supply to a 'consumer' as defined in the Australian Consumer Law, then nothing contained in this agreement restricts or modifies guarantee, right or remedy which pursuant to the Australian Consumer Law applies to this agreement or is conferred on you, provided that to the extent that the Australian Consumer Law permits the us to limit our liability for breach of guarantee imposed by the Australian Consumer Law, then to the extent permitted by the Australian Consumer Law, our liability for such breach is limited to the cost of the following as determined by us:
 - (a) the supplying of the services again; or
 - (b) the payment of the cost of having the services supplied again.
- 10.3 Our aggregate liability in connection with this agreement whether in contract, tort (including negligence), statute or otherwise will not exceed an amount equal to the subscription Fees payable by you to us in the 12 months preceding any claim. We are not liable, whether such liability is based on breach of contract, tort (including negligence), statute or otherwise for any Consequential Loss, indirect, incidental, punitive or special Losses of any kind (including loss of profit, business interruption or a security breach).
- 10.4 To the fullest extent permitted by law, we exclude all warranties, conditions and representations in whatever form, relating to the Platform, including any warranties or representations relating to quality, accuracy, integration, merchantability, conformity with specifications, reliability, functionality, performance, fitness for use or the security and operation of the Platform.

11. IP rights

- 11.1 You acknowledge that we own all IP Rights in the Simple IP which contains confidential and proprietary information belonging exclusively to us.
- 11.2 Nothing in this agreement transfers ownership of any Pre-Existing IP to the other party or any other person.
- 11.3 You own all IP Rights in Your Content. You grant us a royalty-free, non-exclusive, revocable licence to use Your Content to the extent necessary to perform our obligations under this agreement.
- 11.4 You warrant that you have the rights to use Your Content and you take full responsibility for Your Content. You indemnify us against any claims relating to a breach of any third-party rights and/or a breach of any law or regulation as a result of Your Contents claim.
- 11.5 Where you have a chosen Cloud-based Subscription, we will provide you with a non-transferrable, non-exclusive right and license to access and use the Platform via the internet.
- 11.6 Where you have chosen a Customer Managed Subscription:
 - (a) we will provide you with a limited, non-transferrable, non-exclusive right and license to the Software only to the extent required to enable you to configure the Platform in your Microsoft cloud tenant; and
 - (b) you authorise us to conduct reviews, no more frequently than quarterly, of your use of the Software for the purpose of ensuring compliance with this clause 13.6, the User Access Provisions and the Licencing Provisions.

12. Force majeure

- 12.1 If an FM Event occurs, the affected party must notify the other party and the obligations of the party will be suspended to the extent they are affected by the relevant FM Event until that FM Event has ceased.

13. Security

13.1 We do not represent or warrant that the Platform is entirely secure, uninterrupted or error-free. You acknowledge that the public internet is an inherently insecure environment and that we have no control over the privacy of any communications or the security of any data outside of our internal systems.

14. Aggregate Data

14.1 To assist us in providing you an improved experience, you agree that we may monitor your use of, and you must provide us with access to, the Software and (as applicable) your IT environment, for the purpose of us extracting Aggregate Data.

15. Confidentiality and privacy

15.1 Each party must comply with the Privacy Act in connection with the collection, use, handling, disclosure, quality, security of and access to personal information.

15.2 Both parties must keep all Confidential Information confidential and use such information for the sole purpose of performing the obligations under this agreement.

15.3 Neither party may use or disclose the Confidential Information except for a Permitted Purpose.

16. Indemnity

16.1 You indemnify us against any breach of our IP Rights or your use of the Software, including the Source Code, in any way that is contrary to this agreement or against any law.

17. General

17.1 This agreement does not create a relationship of employment, agency, partnership or joint venture. The parties agree that neither has authority to bind the other or to enter into an agreement on behalf of the other.

17.2 We reserve the right to substitute new personnel for any personnel assigned to you from time to time where any assigned personnel become unavailable due to illness, leave or circumstances outside of our control.

17.3 To assist us in promoting the Platform, you agree that we may use your name and/or company logo in any public advertisement and/or to display on the Website.

17.4 We may sub-contract the performance of any part of our obligations and/or services to any third-party.

17.5 The agreement contains the entire understanding between the parties and supersedes all prior communications.

17.6 Failure to enforce provisions under this agreement does not waive a party's right to later enforce such provisions.

17.7 If any term or provision of this agreement is held by a relevant court to be illegal, invalid or unenforceable, that term or provision will be severed from this agreement and the remaining Terms and Conditions will be unaffected.

17.8 The agreement is governed by, and construed in accordance with, the laws of New South Wales, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

17.9 This agreement may not be amended or varied otherwise than in writing and agreed by all parties.

17.10 Neither party may assign, transfer or otherwise deal with any right under this agreement without the prior written consent of the other party, which must not be unreasonably withheld.

17.11 Any warranty, indemnity, or obligation of confidentiality, and any other term which by its nature is intended to survive termination of this agreement, survives termination of this agreement.

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Definitions and Interpretation

18. Throughout this agreement, terms have the following meanings and include obligations that you agree are binding on you, as follows:

Terms	Details
Admin User	means an Authorised User who has administer permissions in the Platform;
Aggregate Data	means the anonymised aggregate information we collected from your use of the Software may include statistical and performance information related to the Software which we will keep confidential (but will not include personal information, or your Confidential Information);
Australian Consumer Law	means the provisions of Schedule 2 to the <i>Competition and Consumer Act 2010</i> (Cth), as applied under Part XI or under a law of a State or Territory.
Authorised User	means the users specified in the Term Sheet (or as amended by an Order Form) who are authorised to use the MRM.
Beta Products	means products or releases that may be released from time to time in beta form that we may designate as beta, pilot, limited release, developer preview, non-production or similar.
Confidential Information	<p>of a party means the confidential, proprietary and commercially-sensitive information (irrespective of the form or the manner in which the information is disclosed, or the time of such disclosure) of that party (disclosing party) which is disclosed to, or learnt by or accessed by the other party (receiving party), including information which:</p> <ol style="list-style-type: none"> is identified by the disclosing party as confidential or the receiving party ought to have been known to be confidential; and relates to the business affairs and practices, including financial information, business opportunities, business plans, business processes and methodologies of the disclosing party, but does not include information: which is in, or comes into, the public domain other than by the receiving party's breach of this agreement; which is independently known to, or developed by, the receiving party as evidenced by the receiving party's written records; or is or was made available to the receiving party by a person (other than the disclosing party) who is not, or was not, under an obligation of confidence to the disclosing party.
Consequential Loss	means any Loss that does not arise naturally in the ordinary course of things from the event or circumstance giving rise to the Loss.
Customer Contract	<p>means the documents setting out the agreement between the parties and includes (as applicable):</p> <ol style="list-style-type: none"> an Order Form and/or an SOW and any attachments, annexures or schedules thereto; the Term Sheet; these Terms and Conditions; and the SLA. <p>If there is any inconsistency in the terms of these documents, the above order of precedence shall prevail.</p>
Contract Term	means the Initial Term and any Renewal Terms.
DAM product	means the Digital Asset Management product specified in the Term Sheet and/or as agreed in an Order Form. The number of concurrent uploaders on the DAM product is limited to the number of uploaders as specified in the Term Sheet. The number of downloaders is unlimited, however the number of concurrent downloaders is limited to 1,000
Development Retainer	means the provision of development services through a retainer model as specified in the Term Sheet and/or as agreed in an Order Form.
Fees	means the relevant fees for the Software Services and/or, Technical Support as specified in the Customer Contract.
FM Event	<p>means a force majeure event; any act, event or cause including earthquakes, cyclones, floods, fires, lightning, storms or other acts of God, strikes or industrial disputes, riots, terrorist acts, civil disturbances, pandemics, breakages of machinery, or industrial conditions, or arising out of any other unexpected and exceptional cause, delays in transportation and dispositions or orders of governmental authority, which:</p> <ol style="list-style-type: none"> directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under this agreement; and is beyond the reasonable control of that party.

Full User	means a user with access to all functionalities of the Platform. Full users are able to create campaigns and jobs, and have widespread permissions across the application, except for those admin permissions to do with setting and managing the Simple environment. Additional licences are purchased in increments of 10 Full User licences. An expansion Order Form will be used to order additional licences.
GST	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Interpretation Provisions	means that for the purposes of interpreting the terms of this Customer Contract: <ul style="list-style-type: none">a) clause and subclause headings are for reference purposes only;b) the singular includes the plural and vice-versa;c) where a word or phrase is defined its other grammatical forms have a corresponding meaning;d) references to statutes include all statutes amending, consolidating or replacing such statutes;e) \$ means the lawful currency of Australia;f) any reference to a party to this document includes its successors and permitted assigns;g) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it; andh) a reference to a clause or schedule is a reference to a clause of, or a schedule of the agreement.
IP Rights	means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, confidential information, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable.
LAM product	means the Local Area Marketing product specified in the Term Sheet and/or as agreed in an Order Form. The number of concurrent uploaders on the LAM product is limited to the number of uploaders as specified in the Term Sheet. The number of downloaders is unlimited, however the number of concurrent downloaders is limited to 1,000.
Licencing Provisions	means you must not: <ul style="list-style-type: none">a) use, modify or adapt the Source Code or the Software in any way that is contrary to this agreement or against any law (including for the purposes of infringing upon any third-party IP Rights);b) transfer, distribute, rent or on-sell any copy of the Platform (or any derivative thereof) to any unauthorised third-party or to gain unauthorised access to the Platform;c) distribute viruses, corrupt files, or any other similar software or programs that may interfere with, damage the operation of or disrupt the integrity or performance of the Platform or any computer hardware or software;d) copy, cache, reproduce, reverse assemble or reverse compile the Platform in whole or in part;e) do anything that would prejudice the existing right, title or interest in the Platform;f) engage in any other conduct that inhibits any other person from using or enjoying the Platform; org) submit, post or display any of Your Content that:<ul style="list-style-type: none">i. you do not have permission, right or license to use, upload, and permit use of as contemplated by the agreement;ii. is objectionable, offensive, unlawful, defamatory, deceptive or harmful; and/oriii. is illegal, fraudulent, or manipulative.
Lite User	means a user provided with limited access to Simple (including the ability to approve content and access marketing jobs and assets) and a restricted view and specific functionality (permissions) for a user. These users typically need to view campaigns, jobs, assets etc, with the ability to make comments and provide approvals within Simple workflows. Additional licences are purchased in increments of 10 Lite User licences. An expansion Order Form will be used to order additional licences.
Loss	means any judgment, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, or otherwise.
MRM	means the business application known as Simple published on Microsoft Apps Source as at the date of this Customer Contract. As agreed by both parties in writing, this may include Beta Products and Updates where applicable. The performance of this product is limited by the technical capabilities of the Microsoft Power Platform and Microsoft Dynamics 365 CE.
Order Form	means an order form you may submit and we may accept from time to time varying the commercial terms of the Customer Contract.

Permitted Purpose	means: <ul style="list-style-type: none">a) for the reasonable purposes of fulfilling the party's obligations and rights under this agreement;b) to that party's employees or advisers on a need-to-know basis and that party must ensure that such persons understand and comply with the obligations imposed by this agreement;c) as required by law, subject to that party notifying the other party immediately if that party becomes aware that such disclosure may be required; ord) with the other party's prior written consent.
Platform	means the suite of Simple products purchased under the terms of this Customer Contract as per the Term Sheet.
Pre-Existing IP	means any IP Rights existing at the date of this agreement, including IP Rights in the Services, software, hardware or documentation and materials used in our or your business, and any enhancements made thereto.
Privacy Act	means the <i>Privacy Act 1998</i> (Cth).
Professional Services	means any professional services including but not limited to configuration, implementation, training and consulting services, that we may agree to provide to you as set out in an SOW, but does not include Technical Support.
Professional Services Fees	means the fees for Professional Services set out in a SOW.
Renewal Date	means the final date of the Initial Term, at which point your Subscription renews for the Renewal Term.
Renewal Point	means the date 2 months before the first Renewal Date.
Services	means the Software Services, Technical Support and/or Professional Services.
Simple IP	Means the IP Rights in the Platform (including in the Software, its Source Code, and any translations, compilations, partial copies and derivative works), in the Aggregate Data, and in our provision of Services.
Simple Technology	means us, Simple Technology Pty Ltd ACN 131 199 776 of 22/60 Margaret Street Sydney 2000, New South Wales Australia.
SLA	means the document governing service levels for Technical Support, amended by us in our sole discretion from time to time, and made available on the Website.
Software	means the Platform's software, which is made available to you if you have a Customer Managed Subscription only to the extent required for you to configure your IT environment for your use of the Platform for the Term, and which does not include the Source Code.
Software Services	means your access and use of the Platform on a subscription basis (including access to related products and services).
Source Code	means the Platform's source code which will at no point be made accessible to you, and which you must not modify or adapt in any way.
SOW	means a statement of works; an executed document between the parties detailing the scope of any Professional Services that we may provide to you.
Taxable Supply	has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
Technical Access Provisions	means in order to provide you with Technical Support, you must provide us: <ul style="list-style-type: none">a) access to your files, records, premises and people with relevant skills and experiences;b) access to relevant systems and software, including but not limited to system administrator access of your Simple application(s), PowerApps, PowerPlatform, PowerBI and any other systems required;c) all required licenses (including appropriate Microsoft and other third-party licences); andd) resources to ensure timely approval, development and sign-off of all reports, specifications, software and other deliverables.
Technical Support	means the technical support services we may agree to provide you as set out in the Term Sheet and/or an Order Form in accordance with these Terms and Conditions and the SLA.

Termination Provisions	means upon termination or expiration of the Customer Contract: <ul style="list-style-type: none">a) you must cease using the Platform;b) you must immediately pay all outstanding Fees;c) your Admin Users will have read-only access to Your Content on the Platform for 60 days following termination, following which we may delete Your Content. We will deactivate your other Authorised Users;d) each party must, on request within 60 days, destroy all Confidential Information in that party's control; ande) we may charge you reasonable Professional Services fees for any further support you require, as agreed in advance by the parties.
Terms and Conditions	means the Commercial Terms, the Legal Terms and these Definition and Interpretation clauses.
Update	means any updates to the Platform including but not limited to upgrades, enhancements, releases, corrections, bug fixes, patches and modifications.
Update Provisions	means we may make Updates to the Platform as we deem necessary and: <ul style="list-style-type: none">a) We may suspend access to, or functionality on, the Platform from time to time in order to make the Updates. We will use reasonable endeavours to provide you notice of such suspension.b) We may invite you to trial Beta Products.c) The Beta Products will be provided for evaluation only, are not supported, may contain bugs or errors, and additional Terms and Conditions may apply.d) To the extent permitted by law, we will provide the Beta Products "as-is" and "as-available", we do not make any warranties and exclude all liability arising from the use of the Beta Products.e) We may terminate your access to the Beta Products at any time in our sole discretion.
User Access Provisions	means you are responsible for: <ul style="list-style-type: none">a) ensuring only Authorised Users access the Platform;b) each Authorised User's access credentials are operated by only one person, this person being transferable at the end of each monthly cycle;c) ensuring Authorised Users do not share, publish or otherwise make available to any third-party their access credentials;d) all activity on your account by you or any of your Authorised Users including any unauthorised access by third parties;e) the confidentiality and security of your account and the Authorised User Logins and notifying us immediately of any unauthorised use. You are also solely responsible for all activities on your account; andf) protecting Your Content, including backing-up, and ensuring the security of, Your Content, taking appropriate measures to protect Your Content from accidental, unlawful or unauthorised access, use or disclosure.g) complying with, and ensuring all Authorised Users comply with, all applicable laws, these Terms and Conditions, and our reasonable directions.
Website	means https://simple.io/
Your Content	means any content, including text, data, logos, documents, imagery, videos or other files entered, uploaded or created by you or your Authorised Users while using the Platform.