

Simplicity Master Customer Agreement

This Simplicity Master Customer Agreement is entered into and effective as of the Effective Date by and between Simplicity Corporation, located at 4040 Wilson Blvd, Suite 300, Arlington VA 22203 ("Simplicity") and the Customer detailed in the Order Form (the "Licensee"), each a 'Party' and together the 'Parties'.

1. **License; Ownership.**

1.1. License. Subject to the terms and conditions hereof, Simplicity hereby grants to Licensee, and Licensee hereby accepts, for the term specified in each applicable Order Form ("Term"), a non-exclusive, non-transferable license for Licensee's own internal business purposes to use the Simplicity software, software-as-a service or other products referenced in Order Form and licensed APIs (the "Licensed Software/Technology"), web hosting services, support services provided by Simplicity and deliverables from additional consulting and services that Simplicity may perform under a PSRA ("Professional Services") (collectively the "Program") solely for the internal business purposes of the named Customer in accordance with the Program documentation made available by Simplicity ("Documentation") to Authorized Users of Customer.

1.2. Restrictions. Licensee shall not modify, improve, enhance, adapt, translate, reverse engineer, disassemble, re-engineer, or decompile the Program or Documentation for any purpose or in any manner whatever or alter, remove or obscure any patent, trademark or copyright notice in the Program or Documentation. Licensee may make only so many reproductions of the Documentation as is necessary to exercise the rights granted to it hereunder. Licensee shall not use the Program or Documentation for any purpose or in any manner except as explicitly stated herein.

1.3. Ownership. Simplicity shall own any and all right title, and interest in and to the Program and the Documentation, including, but not limited to, any and all trademark, copyright, trade secret, patent, and other intellectual property and proprietary rights therein and thereto. Simplicity reserves all right, title, and interest in the Program and Documentation not explicitly and expressly granted to Licensee in this Agreement.

1.4 API License. (a) If Licensee is purchasing an application programming interface ("API") license or a product with an included API service, Simplicity grants Licensee a limited, non-exclusive, revocable, non-sublicensable, non-transferable license, to access each such API solely for Licensee's internal business use by its Authorized Users and in accordance with Documentation provided by Simplicity. Licensee may not utilize the APIs to provide data to third party applications except those third parties with valid API licenses with Simplicity. (b) Licensee may not use or install the API(s) for any other purpose without Simplicity's written consent, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the API(s) or any part thereof. Simplicity reserves the right to limit the number and/or frequency of API requests or take other actions necessary to protect the integrity of Simplicity services. (c) Upon request, Simplicity may require pre-approval by Simplicity of any implementation or technology deployment by Licensee utilizing the APIs. Licensee agrees to provide Simplicity with reasonable access and information requested by Simplicity to ensure Customer's compliance in its usage of the APIs

2. Term, Fees

2.1 Term. This Agreement commences from the effective date of the first Order Form between the Parties (the "Effective Date") and shall continue in force until the expiry of all Order Forms executed by the Parties.

2.2. Fees. (a) For each licensed product or service, Licensee shall pay to Simplicity upon execution of this Agreement and any extensions/renewals thereof the fee referenced in each Order Form which shall not be refunded or prorated for any reason. Any discounts offered to Licensee are reflected in the pricing shown in the Order Form.

(b) Except to the extent indicated to the contrary on an Order Form, subscription products and services shall renew automatically for successive 12 month terms at the then-current pricing unless either party provides written notice of non-renewal at least 90 days prior to the expiry of the applicable term. Any modification to each licensed product or service resulting from the removal of modules or components that involves a decrease in the annual fees will follow the termination requirements of this Section 2.

(c) Except for terminations made in accordance with the requirements of this Section 2 (including applicable notice period requirements), Licensee shall pay all applicable fees set forth in this Agreement for any and all renewal periods of this Agreement for each product, service and instance.

(d) Payments are due net thirty (30) days from the date of Simplicity's invoice and are subject to late charges thereafter, calculated at the lesser of 2% interest per month (or fraction thereof) or the maximum rate permitted by law. In the event of non-payment, Simplicity may suspend performance or provision of the services, terminate this Agreement in accordance with Section 7, and/or require other assurances, undertakings or deposits to secure Licensee's payment obligations hereunder.

(e) Any billing dispute must be made in good faith, in writing and, together with all supporting documentation, received by Simplicity within thirty (30) days from the date of receipt of Simplicity's invoice, or the right to dispute such billing shall be deemed to have been waived. Licensee shall otherwise timely pay any undisputed and validly due fees.

(f) Should Licensee decide to use Simplicity's Credit Card Processing Services the fees and procedures are as follows: 5.25% processing fee on all Visa and MC transactions and 6.25% processing fee on all Amex transactions; \$15 fee for charge backs (disputed charge) for those disputes the cardholder wins; processed refunds will be charged the initial processing fee; and all payouts are processed after each fair/event and once per fair/event.

(g) All prices are exclusive of all applicable country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes ("Taxes"). Licensee shall be responsible for all Taxes however designated or levied, against the sale, licensing, delivery, or use of the Products (other than Taxes based upon Simplicity's net income). Taxes shall not be deducted from the payments to Simplicity, except as required by law, in which case Licensee shall increase the amount payable as necessary so that after making all required deductions and withholdings, Simplicity receives and retains (free from any Tax liability) an amount equal to the amount it would have received had no such deductions or withholdings been made.

3. Professional Services.

3.1. Scope of Service; Change. Any Professional Services to be performed by Simplicity will be described in separately agreed Professional Services Requirements document or Order Form ("PSRA/Statement of Work"). Any changes to the scope contemplated in a Statement of Work must be made by a written change order or amendment to the Statement of Work signed by an authorized representative of each party.

3.2. Services Fees and Expenses. Except as otherwise set forth in a Statement of Work or Order Form, Services are billed on a time and materials basis periodically as work is performed with payment rendered by Licensee under the terms described in the applicable Statement of Work or Order Form or, if provided in the PSRA or Order Form, on a fixed fee basis. Simplicity reserves the right to withhold Services while any fees remain overdue if such fees are not the subject of a bona fide dispute communicated to Simplicity in writing. Licensee will reimburse Simplicity for reasonable out-of-pocket expenses incurred in performance of the Services, which include but are not limited to travel expenses, per diem and mileage, or as may be further described in a Statement of Work. Any prepaid Professional Services must be utilized within 12 months of the initial order and any unused elements expire thereafter without refund.

3.3. Customizations. Simplicity will perform customizations as set out in a Statement of Work in which case Licensee will have the same license usage rights to the customizations as it has to the Licensed Software/Technology licensed hereunder. Customizations are not covered by support services except where separately purchased pursuant to the terms of a separate "Customization Support Services" addendum.

3.4. Services Warranties. Simplicity represents and warrants that the Professional Services will be provided by qualified personnel with reasonable skill and care in accordance with generally accepted industry standards. Simplicity's obligation respecting its material breach of the foregoing warranties is for Simplicity to re-perform the affected Professional Services, as the case may be, at no additional cost to Licensee.

3.5. Licensee Responsibilities. During a Professional Services engagement Licensee will provide Simplicity with reasonable access to requested resources such as: (i) Licensee's personnel, facilities, equipment, hardware, software, network and information for Professional Services to be performed, and (ii) timely decision-making, notification of relevant issues or information and granting of approval or permissions as reasonably necessary for Simplicity to perform the Professional Services.

4. Confidentiality.

4.1. Confidential Information. (a) During the Term and thereafter, the Programs, the Documentation, the terms of this Agreement, and any and all other technical and non-technical information provided by or related to Simplicity or its business ("Confidential Information") shall be proprietary and confidential to Simplicity, and Licensee shall not use, distribute, or make available Confidential Information, or permit such to be done, except as explicitly stated in this Agreement. Confidential Information includes without limitation any and all software, systems, source code, object code, screen displays, methods, processes, inventions, works of authorship, Licensees, vendors, and business plans. (b) Notwithstanding the foregoing, Confidential Information does not include any information independently developed by Licensee without regard to the Confidential Information, information in the public domain, or information disclosed to Licensee by a third party not in violation of any confidentiality restrictions. Upon termination of this Agreement, the Receiving Party shall destroy and provide written confirmation of the destruction of, all Confidential Information received or created pursuant to this Agreement, at the Receiving Party's sole expense.

4.2. Other Disclosure. If Licensee is required to disclose or make available any Confidential Information pursuant to a valid court order or other legal requirement, Licensee shall promptly notify Simplicity of such requirement in writing in advance and cooperate and assist Simplicity in any efforts undertaken by Simplicity to limit the disclosure. Notwithstanding the foregoing, in all cases of a required disclosure, Licensee shall limit the information disclosed or made available to the minimum required by law.

4.3. Breach; Injunctive and Monetary Relief. Licensee acknowledges that because of the unique and proprietary nature of the Program, the Documentation and the Confidential Information of Simplicity, Simplicity would suffer irreparable harm in the event that Licensee breaches any provision of Sections 1.1, 1.2, 4.1 or 4.4 of this Agreement, and that monetary damages alone would be inadequate to fully compensate Simplicity for such a breach. Accordingly, the parties expressly agree that — in the event of Licensee’s breach of any provision of Sections 1.1, 1.2, 4.1 or 4.4 of this Agreement — that Simplicity shall be entitled, both (i) to immediate injunctive relief as may be necessary to restrain any continuing or further breach by Licensee, without showing or proving any actual damages sustained by Licensee, and also (ii) to all monetary relief available to Simplicity under applicable law. The parties expressly agree that these foregoing equitable and monetary remedies are complementary forms of relief, and are not alternative forms of relief.

4.4 Miscellaneous. Each Party agrees to refrain from making, sending or otherwise communicating or causing to be communicated, any disparaging or derogatory comments, statements or other communications regarding the other Party or take any action, which a reasonable person would expect, directly or indirectly, to impair the goodwill, business reputation or good name of the other Party. Licensee may not provide Program pricing or Documentation to any Simplicity competitor.

5. Warranties.

5.1. Operation. Simplicity warrants that the Program will operate substantially in accordance with the Documentation after it is made available to Licensee. If Licensee discovers any failure of the Program to operate in such manner, Licensee shall promptly notify Simplicity in writing of such failure. Upon receipt of such notice, Simplicity shall undertake commercially reasonable efforts to resolve or fix such failures, provided that such failure can be reproduced and verified by Simplicity using the most recent version of the product or service, and that any nonconformity to applicable Documentation is not caused by customizations or configurations specific to Licensee or any unauthorized modification or misuse of software or service. The remedy set forth in this paragraph shall be Licensee’s sole and exclusive remedy for breach of the warranties provided under this Section.

5.2. Disclaimer. **EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE PROGRAM AND DOCUMENTATION ARE PROVIDED “AS IS” AND “WITH ALL FAULTS,” AND SYMPPLICITY MAKES NO REPRESENTATIONS OR WARRANTIES, AND DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NON-INTERFERENCE, ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY, SYSTEMS INTEGRATION, QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE.**

6. Indemnification; Limitations.

6.1. Indemnification by Simplicity. (a) If any third party brings a claim, demand or cause of action ("Demand") against Licensee alleging that the use of any Simplicity products or technology (the "Subject Technology") authorized under this Agreement infringes: (1) a U.S. patent issued prior to the Effective Date; or (2) a copyright under applicable law of any jurisdiction, Licensee must promptly notify Simplicity in writing and make no admission in relation to such alleged infringement. In connection with any such claim and provided that Licensee has promptly fulfilled all of the foregoing obligations and Licensee's use of the Program at all times was in compliance with the Agreement and Documentation, Simplicity shall at its own expense and option: (i) indemnify, defend, and settle such claim, (ii) procure Licensee the right to use the Subject Technology, (iii) modify or replace the Subject Technology to avoid infringement; or (iv) refund the applicable fee paid for the current term relating to the Subject Technology. (b) The foregoing is conditioned on Licensee having notified Simplicity promptly in writing of such Demand, Licensee giving Simplicity sole control of defense and/or settlement thereof (including without limitation all negotiations for settlement and compromise thereof), and Licensee cooperating in the defense thereof at Simplicity's request, provided that Simplicity will keep Licensee informed of, and will consult with any independent legal advisors appointed by Licensee at Licensee's own expense regarding the progress of such defense. (c) Licensee shall not incur any costs or expenses on behalf of Simplicity under or pursuant to this Agreement without Simplicity's advance written consent. (d) Simplicity shall have no liability to Licensee under this Section 6.1 or otherwise for any Demand alleging infringement or violation of applicable privacy or publicity laws based upon: (i) any use of the Program or Documentation in a manner other than as specified by Simplicity; (ii) any combination of the Program or Documentation with other products, equipment, devices, software, systems or data not manufactured by Simplicity (including, without limitation, any software used by Licensee in conjunction with the Program) to the extent such claim is directed against such combination; (iii) data, information, graphics or other media files or other content provided by Customer or any Authorized User, or the use of such content; or (iv) any modifications or customization of the Program or Documentation by any person other than Simplicity (any of the foregoing, separately and collectively, "Licensee Matters").

6.2. Damages. (a) **IN NO EVENT SHALL SYMPPLICITY BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR PERSONS FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND WHATSOEVER ARISING FROM OR CONNECTED WITH THE PROGRAM, DOCUMENTATION, OR THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUES, OR LOSS OF BUSINESS, REGARDLESS OF LEGAL THEORY, WHETHER OR NOT FORESEEABLE, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES AND EVEN IF THE REMEDIES OTHERWISE PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.** (b) The provisions of Section 6.1 state the entire liability and obligations of Simplicity, and the exclusive remedy of Licensee with respect to claims by any third party alleging infringement of any intellectual property right by Simplicity. The remedies specifically provided by this Agreement and the provisions of this Section allocate between the parties the risks under this Agreement, some of which may be unknown or undeterminable. Such limitations were a material inducement for the parties to enter into this Agreement, and the parties have relied upon such limitations in determining whether to enter into this Agreement.

6.3. Monetary Liability. **THE AGGREGATE TOTAL LIABILITY OF SYMPPLICITY UNDER OR IN CONNECTION WITH THE PROGRAM, DOCUMENTATION, OR THIS AGREEMENT TO LICENSEE OR ANY OTHER PERSONS SHALL UNDER NO CIRCUMSTANCES EXCEED THE AMOUNTS PAID BY LICENSEE OVER THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY UNDER THE ORDER FORM OR STATEMENT OF WORK FOR THE APPLICABLE PRODUCT OR SERVICE.**

6.4 Other content, Data or Technology. Licensee warrants that customer has all necessary rights to use any content, data or third-party technology that is utilized by customer in conjunction with the licensed Software/Technology.

7. Termination.

7.1 Termination Rights. Ordered products and services are non-cancellable for the Order Term stated on an Order Form. Either party may terminate this Agreement, an Order Form and/or Statement of Work if the other party breaches such Agreement, an Order Form and/or Statement of Work and fails to cure such breach within thirty (30) days of written notice of breach or within seven (7) days in the case of breach for non-payment. Simplicity may terminate this Agreement and any underlying Order Forms or Statements of Work immediately if Licensee breaches any of the terms of Sections 1.1, 1.2, or 1.3.

7.2. Effect of Termination. Upon termination of this Agreement, an Order Form and/or Statement of Work, as the case may be, for any reason: (i) all rights and obligations of the parties under this Agreement and/or such License, Order or Statement of Work will automatically terminate except for rights of action accruing prior to termination, (ii) all amounts due thereunder shall be due within 30 days after the date of termination,. Licensee shall immediately return to Simplicity or destroy all Confidential information and applicable Licensed Software/Technology and Documentation, provided to Licensee, as well as any and all copies thereof. Termination shall not relieve Licensee of any payment obligations arising prior to termination.

7.3. Survival. The terms of Sections 1.2, 1.3, 2, 4, 5, 6, 7 and 8 shall survive any expiration or termination of this Agreement or the licenses granted hereunder.

8. Miscellaneous.

8.1. Notices. All notices, consents, and other communications between the parties under or regarding this Agreement shall be in writing and shall be sent to the recipient's address set forth in the introduction to this Agreement or on the most recent Order Form. Such communications shall be deemed to have been delivered upon receipt by the recipient or two business days after deposit with a reputable overnight courier service. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section.

8.2. Assignment. This Agreement may not be assigned by Licensee, in whole or in part, by operation of law or otherwise, without the advance written consent of Simplicity, which consent may be withheld in Simplicity's sole discretion. Any attempted assignment in violation of this section shall be void. Simplicity may assign this Agreement upon written notice to Licensee if the assignee agrees to be bound in writing by Simplicity's obligations hereunder.

8.3. Applicable Law and Conflict Resolution. (a) Except for debt recovery or collection actions for amounts due hereunder, or actions for infringement or violation of Simplicity's intellectual property rights, in the event of any controversy or claim arising out of or relating to this Agreement, an Order Form or Statement of Work, or a breach thereof, the parties will consult and negotiate with each other and attempt to reach a satisfactory solution. If they do not reach settlement within a period of thirty (30) days, then, upon notice by any party to the other, any such controversy or claim will be referred to arbitration for full and final settlement by a panel of three arbitrators (or fewer if agreed by the Parties) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"). (b) All arbitration proceedings will be conducted in the English language and will be conducted pursuant to ICC Rules. Any award issued pursuant to ICC Rules may be enforced by any court of competent jurisdiction. The allocation of the cost of the arbitrators and administration of conducting the arbitration will be borne equally by the Parties and the arbitrator will not have the power to award punitive damages. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement. (c) The applicable governing law is the Commonwealth of Virginia, USA without regard to principles of conflicts of law and the place of arbitration is Arlington, Virginia.

8.4. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between the parties with respect to the subject matter of this Agreement, and this Agreement supersedes any and all prior or contemporaneous oral or written communications, proposals, representations, and agreements, express or implied. This Agreement may be amended only by mutual agreement expressed in writing and signed by both parties.

8.5. Force Majeure. Except for non-payment of amounts due under this Agreement, neither party shall be liable to the other party for non-performance of this Agreement in whole or in part, if the non-performance is caused by the other party or events or conditions beyond that party's reasonable control.

8.6 Exclusivity. Simplicity offers Licensee its proprietary hosted Program software and technology products and add-ons described in the Order Forms to this Agreement ("Simplicity Product Components") as well as applicable related services and support ("Related Services"). Except during the thirty (30) day period prior to the effective date of the termination or expiration of this Agreement, Simplicity shall be the sole and exclusive provider to Licensee of products providing the same or substantially similar functionality (including but not limited to applicable products for evaluation purposes and other non-live environments) to the Simplicity Product Components and of services that are the same or substantially similar to the Related Services for the term of this Agreement.

8.7 Transition Services. If requested by Licensee in writing, Simplicity may offer Licensee with mutually agreeable transition services for a fee during the thirty (30) day period prior to the effective date of the termination or expiration of this Agreement ("Transition Period"). Simplicity and Licensee shall update Order Form of this Agreement to reflect the fees and transition services to be provided by Simplicity during the Transition Period.

8.8 Additional Stipulations. Licensee shall use the Program only in accordance with the Documentation and any reasonable policies and procedures and/or acceptable use policies provided by Simplicity to Licensee as may be in effect from time to time. Licensee permits Simplicity to use the Licensee's name and logo in conjunction with the provision of services under this Agreement for the benefit of the Licensee's students. In addition, Simplicity may list Licensee as a participant in Simplicity Recruit network and in any related promotional material, print or electronic, and may use the Licensee's name and logo on Simplicity owned sites where it lists the participating Licensees.

8.9. Other. (a) The waiver or failure of either party to exercise in any respect any right provided hereunder shall not be deemed a waiver of such right in the future or a waiver of any of other rights established under this Agreement. Agreement, Section, and Paragraph headings are for reference only and shall not affect the interpretation of this Agreement. (b) This Agreement and all of the provisions in this Agreement shall be binding upon and inure to the benefit of the permitted successors in interest and assigns of the parties. (c) The parties do not intend, nor shall any clause be interpreted, to create under this Agreement any obligations or benefits to, or rights in, any third party from either Licensee or Simplicity.

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