

**Dated**

2011

**VIP REWARDS CLUB –  
MEMBER TERMS AND CONDITIONS**

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## VIP Rewards Club – Member Terms and Conditions

By clicking the 'AGREE' button you hereby agree to enter into legal relations with both your Consultant and Creative Memories in respect of your membership to the VIP Rewards Club and, subject to acceptance of your application by both your Consultant and by Creative Memories, to be bound by these terms of use ("**Terms**"). If you do not agree to these Terms, please click 'CANCEL', and your application to the VIP Rewards Club will not be submitted.

### 1. DEFINITIONS & INTERPRETATIONS

The following definitions are used in these Terms:

"**Annual Fee**" means the membership fee payable to Creative Memories by each Member in order to continue being a member of the VIP Rewards Club. Upon applying to become a Member, the Annual Fee for the first year is the Joining Fee.

"**Club Leader**" means a Member who has registered a Sub-Club within the VIP Rewards Club and is therefore eligible for further Credit towards Bonus Product in accordance with clause 9.

"**Consultant**" means a person who has (i) entered into a Consultant's Agreement with Creative Memories, and (ii) entered into a Supplementary Agreement with Creative Memories in respect of the VIP Rewards Club. "**Your Consultant**" means the Consultant to whom your Membership is attributed by Creative Memories pursuant to these Terms.

"**Content**" means avatars, blogs, comments, compliments, criticism, discussions, forums, images, observations, opinions, pictures, rankings, recommendations, responses, testimonials, test, videos.

"**Creative Memories**", "**Our**", and "**We**" means Creative Memories Australia Pty Limited (ACN 080 179 193).

"**Creative Memories Products**" means various products and services made available for sale by Creative Memories to Consultants and customers from time to time.

"**Credentials**" means a VIP Membership ID, login and/or password.

"**Disseminate**" means any form of communication by any means howsoever through any medium, including, without limitation, email, uploading, downloading, posting, listing, posting hyperlinks to, chatting, book-marking, social network sharing (including via Facebook, Twitter, and the like), transmitting, and publishing.

"**GST**" means goods and services tax chargeable, or to which a person may be liable, under the A New Tax System (Goods and Services Tax) Act 1999.

"**Host**" means a person who holds a Party on behalf of a Consultant.

"**Joining Fee**" means the initial Annual Fee payable to Creative Memories at the time of Your application to become a Member.

"**Member**" means those users that have applied to join the VIP Rewards Club pursuant to these Terms and been granted membership.

"**Online Store**" means the online ordering and payment system made available to Members through Creative Memories' website, through which Members may make VIP Purchases.

"**Party**" means a social gathering organised by a Host, where a Consultant presents Creative Memories Products for purchase.

"**Privacy Policy**" means Creative Memories' privacy policy as available on Our website, as amended from time to time.

"**Credit towards Bonus Product**" means rewards earned by each Member as set out in clauses 8.1 and 9.1, which may be used by the Member to purchase Creative Memories Products for the purpose of ordering Creative Memories Products collectively.

"**Sub-Club**" means a group of Members who have chosen to be identified as a social group.

"**VIP Membership ID**" means the unique alphanumeric identification code allocated by Creative Memories to each Member on acceptance of that Member's VIP Rewards Club application.

"**VIP Purchases**" means any orders for Creative Memories Products placed and paid for by Members (or by that Member's Consultant) through any of the order processes set out in clause 8.1 (including through the Online Store) pursuant to these Terms.

“VIP Rewards Club” means the customer loyalty program of the Consultants of Creative Memories, including the online community owned, operated and promoted by Creative Memories via certain web addresses from time to time.

“You” and “Your” means any person who is either a Member or who has submitted an application to register as a Member.

## **2. SUMMARY OF VIP REWARDS CLUB**

- 2.1 The VIP Rewards Club is a new and innovative development that allows Members to earn Credit towards Bonus Product on each of their purchases of Creative Memories Products, which Credit towards Bonus Product can be accrued and redeemed on future purchases.
- 2.2 When signing up to the VIP Rewards Club, You must nominate a Consultant from whom You will order all of Your purchases of Creative Memories Products.
- 2.3 For each VIP Purchase, You will pay the full amount of the price payable for the relevant Creative Memories Products to the Consultant either directly (for example, in the case of a Party) or by using the online payment facilities available on the Online Store.
- 2.4 Creative Memories will, as agent for the Consultant, host the Creative Memories website, host the Online Store, hold all stock, and arrange the delivery of all VIP Purchases.
- 2.5 You may create a Sub-Club, and earn further Credit towards Bonus Product by being a Club Leader (clause 6).
- 2.6 Credit towards Bonus Product shall expire and be of no value and effect 12 (twelve) months after they are earned by You, and in any case on the cancellation or termination of Your Membership.
- 2.7 Any questions regarding the VIP Rewards Club should be referred to Your Consultant directly, or to the Creative Memories customer service line on (02) 9472 9472 or by email at [viprewardsclub@creativememories.com.au](mailto:viprewardsclub@creativememories.com.au)
- 2.8 Title in all Creative Memories Products purchased by You under the VIP Rewards Club shall pass to You upon receipt of payment of the relevant VIP Purchase. Risk in such products shall pass on delivery.
- 2.9 All prices referred to in these Terms are GST inclusive (where applicable).

## **3. BECOMING A VIP REWARDS CLUB MEMBER**

- 3.1 You agree to be bound by these Terms from the date of acceptance of your application by Your Consultant and by Creative Memories. These Terms may be amended by Creative Memories from time to time by written notice in accordance with clause 21.4, such amendment to take effect from the date of the notice.
- 3.2 To apply to become a Member of the VIP Rewards Club, You must accurately complete an Application Form on line at [www.creativememories.com.au](http://www.creativememories.com.au), nominate the Consultant that You wish to register under, and pay the Joining Fee.
- 3.3 Only active Consultants who have agreed with Creative Memories to participate in the VIP Rewards Club and to be responsible for sales of Creative Memories Products to Members will be available for You to choose from when applying to become a Member of the VIP Rewards Club.
- 3.4 To be a Member, You must be 18 years of age or older, and be resident in Australia. No Consultant or Creative Memories employees or officers can apply to become a Member of the VIP Rewards Club.
- 3.5 Creative Memories may, in its absolute discretion accept or refuse any application for, or cancel Your Membership or the participation in the VIP Rewards club of Your Consultant. You will be notified of any such acceptance, refusal, or cancellation.

## **4. ACCOUNT DETAILS & ACCESS TO ONLINE STORE**

- 4.1 Creative Memories will, on behalf of your Consultant, issue You with Credentials to enable You to access the Creative Memories website and Online Store, and to participate in the VIP Rewards Club. You are solely responsible for the safety, security and confidentiality of Your Credentials and You will ensure that only You have access to and use of the Credentials.
- 4.2 You will be liable for and indemnify and hold Your Consultant and Creative Memories harmless for any and all costs, damages or losses arising from any authorised and/or unauthorised access to the VIP Rewards Club via your Membership or Your Credentials, including the payment of all VIP Purchases submitted using Your Credentials.

- 4.3 Your Membership will remain current until it is suspended, cancelled or terminated by You, the Consultant, or Creative Memories in accordance with these Terms. Failure to pay your Annual Fee within 30 days of the anniversary of your becoming a Member starting date will result in your Membership being cancelled.

## **5. PROVISION OF VIP REWARDS CLUB CARD**

- 5.1 You will be issued a "**VIP Rewards Club Card**" that records Your name and Your VIP Membership ID. VIP Rewards Club Cards are not debit, credit or charge cards, are not redeemable for cash or transferable and are to remain the property of Creative Memories at all times. VIP Rewards Club Cards must be returned to either Your Consultant or Creative Memories immediately on demand by Creative Memories. If You lose a VIP Rewards Club Card, You should contact Creative Memories on (02) 9472 9472 or by email at viprewardsclub@creativememories.com.au for a replacement.

## **6. SUB-CLUBS**

### **6.1 Creation of a Sub-Club**

- (a) A "Sub-Club" is a collection of current Members who wish to be grouped together. Sub-Clubs are encouraged to meet together regularly to pursue their interest in activities that are related to Creative Memories Products.
- (b) A Sub-Club can have any number of Members, and may be registered by any Member by filling in the Sub-Club application form on the VIP Rewards Club website. Each Sub-Club must have a Club Leader. The Member registering the Club is identified as the Club Leader.
- (c) A Sub-Club must identify an active Consultant to register under at the time of application. Only active Consultants who have agreed with Creative Memories to be a part of the VIP Rewards Club and to be responsible for sales of Creative Memories Products to VIP Club Members will be available for You to choose from when applying to register a Sub-Club.
- (d) Either Creative Memories or the Consultant may accept or refuse any application for, or cancel any Sub-Club. The prospective or actual Club Leader will be notified of any such acceptance, refusal, or cancellation.

### **6.2 Joining a Sub-Club**

- (a) Members can only be part of one Sub-Club at any time.
- (b) All Members must belong to a Sub-Club. When applying to become a Member, Members will be offered the option to join Your Consultant's default Sub-Club. The default Sub-Club will operate without a Club Leader.
- (c) Subject to clause 6.2(a), You can apply to join any other Sub-Club that is attributed to Your Consultant at any time.
- (d) You can apply to join a Sub-Club that is attributed to a different Consultant by first changing Your Consultant (using the online facilities at the Creative Memories website), and then applying to join one of Your new Consultant's Sub-Clubs.

### **6.3 Maintenance of a Sub-Club**

- (a) Subject to clause 6.2(d) above, a Sub-Club will remain attributed to the same active Consultant as set out in the application for registration of the Sub-Club unless the Consultant deactivates or is terminated, in which event the Sub-Club and all Members will be defaulted to the next upline Consultant who has agreed with Creative Memories to participate in the VIP Rewards Club and to be responsible for sales of Creative Memories Products to Members.
- (b) If a Club Leader of a Sub-Club is no longer a Member for any reason, the Sub-Club will be disbanded and the Sub-Club's Members will be allocated to the Consultant's default Sub-Club. Members may then choose to apply to register a new Sub-Club, and nominate a new Club Leader.
- (c) Club Leaders are entitled to Club Leader benefits as set out in clause 9 below.

## **7. VIP REWARDS CLUB MEMBER BENEFITS – GENERAL TERMS**

- 7.1 Membership benefits are determined by Creative Memories from time to time and may include (without limitation) credit towards Bonus Product, bonus product, discounts on Creative Memories' products, invitations to exclusive events, and qualification for, or entry into, various promotions.
- 7.2 Membership benefits only apply to the Member and may not be used in conjunction or combination with any other offer or promotion unless specified otherwise by Creative Memories in its promotional material.
- 7.3 Subject to clause 7.4, neither the Consultant nor Creative Memories shall be liable to any Member or to any third party in any way if any benefits or promotions are unavailable at the time of ordering for any reason including, without limitation, as a result of a technical malfunction, operator fault, and errors resulting from computer hardware or software errors or failure.
- 7.4 If any such technical malfunction, operator fault, error resulting from computer hardware or software error or failure results in a discount to which You are entitled being overlooked or wrongly attributed, You may bring this matter to the attention of Your Consultant within 60 days of the error occurring who will liaise with Creative Memories to arrange for the appropriate product credit to be added to Your account.
- 7.5 All VIP Purchases and all Member benefits that consist of Creative Memories Products (or other products) are subject to availability.
- 7.6 Membership benefits, including Credit towards Bonus Product, are not negotiable, not transferable, and may not be redeemed for cash. Any Membership benefits accrued by a Member will expire and be of no value or effect 12 (twelve) months after the relevant Membership benefits are earned and in any case if that Membership is cancelled or otherwise terminated.
- 7.7 Any Credit towards Bonus Product allocated to a Member can only be redeemed by that Member.

## **8. VIP REWARDS CLUB MEMBER BENEFITS – SPECIFIC TERMS**

- 8.1 You shall receive Credit towards Bonus Product equivalent to 15% of the price paid by You for Creative Memories Products purchased from Your Consultant through the following order processes:
  - (a) attendance by You at a Party, where You order Creative Memories Products from Your Consultant who's running the Party and You give Your Consultant Your VIP Membership ID at the time of placing the order;
  - (b) an order placed by a Consultant on the Member's behalf, where the Member gives the Consultant their VIP Membership ID at the time of placing the order with the Consultant, provided the Member is attributed to a Sub-Club under that Consultant (including the default Sub-Club); and
  - (c) orders placed by You through the Online Store.
- 8.2 You do not receive Credit towards Bonus Product on:
  - (a) any postage & handling charges, event fees or other purchases that are not Creative Memories Products;
  - (b) any Storybook output (including Storybooks, Poster Prints, Page Prints, Calendars); or
  - (c) the value of any Creative Memories Products purchased using Credit towards Bonus Product.
- 8.3 Subject to clause 8.4, Credit towards Bonus Product may be used by You to fund the whole amount of a purchase by You of any Creative Memories Products (excluding payment of any applicable freight and handling charges, which must be paid using the Online Store's credit card payment facilities upon submitting the order for the relevant VIP Purchase). For the avoidance of doubt, any purchases of Creative Memories Products using Credit towards Bonus Product must be paid entirely with Credit towards Bonus Product. You may only redeem Your Credit towards Bonus Product on Creative Memories Products that have a retail price that is less than or equal to the value of the available balance of Your Credit towards Bonus Product. You may not in any circumstances 'top-up' or supplement Your Credit towards Bonus Product with cash (except as set out above in respect of the payment by credit card of freight and handling charges).
- 8.4 Credit towards Bonus Product may be redeemed by You only by You ordering Creative Memories Products through the Online Store, and may not be redeemed through any other order process that is otherwise available to You.

- 8.5 Credit towards Bonus Product are not available for redemption on any Storybook output (including Storybooks, Poster Prints, Page Prints, Calendars).
- 8.6 Credit towards Bonus Product can be accumulated.
- 8.7 Members cannot purchase additional Credit towards Bonus Product.
- 8.8 Credit towards Bonus Product will be made available to You within 7 (seven) days following the delivery of the relevant VIP Purchase.

#### **9. VIP REWARDS CLUB MEMBER BENEFITS – CLUB LEADER BENEFITS**

- 9.1 A Club Leader of a Sub-Club shall receive additional Credit towards Bonus Product equivalent to 10% of the price paid by any Member of their Sub-Club for Creative Memories Product purchased in each calendar quarter if:
  - (a) the cumulative price of the Creative Memories Product purchased by Members of the Sub-Club is \$600 or more (including GST) in that calendar quarter; and
  - (b) the Creative Memories Product is purchased through the following order processes:
    - (i) an order placed by a Consultant through the Online Store on the Member's behalf, where the Member gives the Consultant their VIP Membership ID at the time of placing the order with the Consultant, provided the Member is attributed to a Sub-Club under that Consultant (including the default Sub-Club); and
    - (ii) orders placed by a Member of the Sub-Club through the Online Store.
- 9.2 For the avoidance of doubt, the cumulative price of Creative Memories Product purchased through attendances by Members at a Party, where the Members order Creative Memories Products from the Consultant who's running the Party and give the Consultant their VIP Membership ID at the time of placing the order, shall not be included for the purposes of clause 9.1.
- 9.3 For the purposes of calculating these additional Credit towards Bonus Product, cumulative VIP Purchases of the Sub-Club are calculated on a daily basis, and subject to clause 9.1(b) include all VIP Purchases made by a Member whilst being part of that Sub-Club at the time of the order, even if they are not a Member of the Sub-Club on the last day of that calendar quarter.
- 9.4 Any Credit towards Bonus Product will be made available to the Club Leader within 7 (seven) days following the end of each calendar quarter.
- 9.5 For the avoidance of doubt, Credit towards Bonus Product earned pursuant to this clause 9 are identical in all respect to Credit towards Bonus Product earned by Members pursuant to clause 8.
- 9.6 Club Leaders of a Sub-Club do not receive any Credit towards Bonus Product if the Sub-Club does not consist of 3 (three) or more Members (one of which is the Club Leader) on the last day of the calendar quarter. By way of example, assuming a Sub-Club has met the sales thresholds for a Club Leader to qualify for Club Leader benefits, if that Sub-Club has 3 Members, and 1 Member withdraws from the Sub-Club immediately before the last day of the calendar quarter, leaving only 2 Members on the last day of the quarter, then Club Leader benefits are not payable. Similarly, if that Sub-Club has 2 Members, and 1 additional Member joins the Sub-Club immediately before the last day of the calendar quarter, resulting in there being 3 Members on the last day of the quarter, then Club Leader benefits are payable.
- 9.7 Club Leaders may be granted further opportunities to earn additional Credit towards Bonus Product pursuant to various promotions that Creative Memories may run from time to time.
- 9.8 Subject to clause 7.6, if a Member who is a Club Leader ceases to be a Club Leader for any reason, that Member shall retain any Credit towards Bonus Product that had been allocated to that Member by virtue of being a Club Leader.

#### **10. RIGHT TO UPLOAD AND SHARE CONTENT**

- 10.1 In exchange for You agreeing to these Terms Creative Memories grants You a non-exclusive, non-transferable, limited right to access and use the Online Store and the Creative Memories website for as long as You are a Member of the VIP Rewards Club.
- 10.2 For so long as You are a Member of the VIP Rewards Club You may create, upload, view, and download Content stored within the VIP Rewards Club section of the Creative Memories website provided that:
  - (a) where created or uploaded by You, the Content will be Your original work;

- (b) You will not copy, plagiarise, reproduce or otherwise Disseminate the work of any other person;
  - (c) the Content will not infringe any intellectual property rights of any third party;
  - (d) the Content is uploaded or connected in accordance with Our instructions from time to time, including via the use of other services and technologies, including YouTube; and
  - (e) You are not otherwise in breach of these Terms.
- 10.3 You grant to Your Consultant and to Creative Memories the non-exclusive, transferable, sub-licensable, perpetual, irrevocable, royalty free, worldwide rights to Disseminate, reproduce, edit, modify, distribute, display and delete Your Content (in whole or in part) via the VIP Rewards Club or via any other medium or channel as may be determined by every Consultant and by Creative Memories from time to time.
- 10.4 You consent to other Members accessing, downloading, using and viewing Your Content.
- 10.5 You will at all relevant times remain the exclusive owner of the Content that You create and upload to the VIP Rewards Club.
- 10.6 Your Consultant or Creative Memories may, using its absolute discretion at any time, temporarily or permanently remove Your Content, in part or in full, from the Creative Memories website. On cancellation or termination of your Membership, any Content that You have uploaded may remain, be removed, or subsequently be re-uploaded from the Creative Memories website by the Consultant or by Creative Memories.
- 10.7 In accordance with and for the purposes of section 107(2) of the Copyright Act 1994, by accepting these Terms You waive the all Your Moral Right's (as set out in Part 4 of the Copyright Act 1994) in respect of the Content that You create and upload to the Creative Memories website, including without limitation:
- (a) the right to attribution and/or identification of authorship;
  - (b) the right not to have the work subjected to derogatory treatment;
  - (c) the right of integrity (or false attribution of identity) of authorship; and
  - (d) the right to privacy of photographs and films commissioned by You for private and domestic purposes.

## **11. RESTRICTIONS ON USE**

- 11.1 You will not copy, or allow to be copied, all or part of any Content or any of the underlying Creative Memories website code, other than as expressly permitted under these Terms;
- 11.2 You will not Disseminate any Content that has been uploaded to the Creative Memories website by any other people;
- 11.3 You will not use the VIP Rewards Club, or the Creative Memories website for any unlawful, immoral or unethical purpose, as We determine in Our sole and absolute discretion, including:
- (a) the Dissemination of unsolicited or unauthorised commercial electronic messages, SPAM, advertising or promotional material;
  - (b) the impersonation or theft of another person's identity or falsely state or otherwise misrepresent your affiliation with a person, including Your Consultant or Creative Memories;
  - (c) the creation or Dissemination of false or alias identities;
  - (d) to harass, threaten, stalk or otherwise communicate with any Person against their will;
  - (e) to vilify others, including, without limitation based on race, ethnicity, sex, sexual preferences, religion or politics;
  - (f) the Dissemination of pornography, including child pornography involving a person under the age of 18 years or such age as provided by the laws and/or regulations of the countries or jurisdictions in which You exercise your Membership rights or in which you use the Creative Memories website, whichever is younger;
  - (g) to defame, slander or libel any Person;
  - (h) for the purpose of money laundering, terrorist activities, causing civil unrest and other criminal activities;

- (i) for the purpose of phishing;
- (j) for the purposes of industrial espionage or Dissemination of inside information gained or propagated by unlawful means;
- (k) to Disseminate or otherwise infringe upon the private and/or confidential information or intellectual property rights of any Person or infringe the publicity rights any Person; and
- (l) to Disseminate material that is abusive, vulgar, obscene, hateful, tortuous or otherwise objectionable.

11.4 You will not commercialise all or part of the VIP Rewards Club;

11.5 You will not use the Creative Memories website or upload Content to promote, market, distribute or sell any goods or services, other than Creative Memories Products;

11.6 You will not make any adaptation, modification or derivative work of other Member's Content;

11.7 You will not use any type of spider, virus, worm, trojan horse, time bomb, adware, bot, hack, malware, phishing or other malicious codes, computer activity, application, executable, program, software or instructions that are designed to:

- (a) disable, damage, disrupt or disassemble all or part of the Creative Memories website;
- (b) communicate or seek to communicate with persons using the Creative Memories website;
- (c) modify, adapt, reverse engineer, decompile, disassemble all or part of the Creative Memories website or create derivative works based on all or part of the Creative Memories website (other than to the extent permitted by applicable copyright law);

11.8 You will comply with any reasonable directions issued by the Consultant or by Creative Memories from time to time in relation to Your access, use and participation in the VIP Rewards Club;

## **12. PERSONAL INFORMATION – PRIVACY ACT 1988**

12.1 Your Consultant and Creative Memories will hold and use Your personal information in accordance with Creative Memories' Privacy Policy (a copy of which may be viewed at [www.creativememories.com.au](http://www.creativememories.com.au)).

12.2 You acknowledge and agree that Your Consultant and Creative Memories may collect and hold personal information about You from time to time in order to manage your Membership of the VIP Rewards Club, to provide you with access to the Creative Memories website, the Online Store, and for marketing, promotions, research, product development and planning purposes.

12.3 Any Member whose personal information is held by its Consultant or by Creative Memories has the right under the Privacy Act 1988 to obtain access to and request correction of any such personal information held by its Consultant or by Creative Memories regarding that Member.

12.4 You can access, update or correct any personal information through the 'My Account' section of the VIP Rewards Club website. Notwithstanding clause 12.3, You agree that you will keep Your Membership details and personal information accurate, current and up to date, and promptly correct any inaccuracies that appear in Your Membership profile by using the Creative Memories website.

12.5 You acknowledge and agree that Creative Memories may contact you directly in relation to the VIP Rewards Club.

## **13. FURTHER ACKNOWLEDGEMENTS**

13.1 You acknowledge and agree that:

- (a) neither Your Consultant nor Creative Memories is or will be the creator of all Content;
- (b) neither Your Consultant nor Creative Memories can or does confirm the identity of Members, their qualifications, backgrounds, abilities, bona fides, except as required by law, or as set out in these Terms;
- (c) neither Your Consultant nor Creative Memories makes any representation in respect of, and does not warrant the accuracy or bona fides of, any Content created and uploaded by Members;
- (d) other Member's Content contained in the VIP Rewards Club section of the Creative Memories website is uploaded for personal use only and may not be Disseminated, sold, used or redistributed by You for any other purpose; and

- (e) to the extent permitted by law, neither Your Consultant nor Creative Memories will be liable for any loss or damage incurred by a Member as a result of any failure or delay in Creative Memories transmitting or providing any information to or from a Member or removing or failing to remove any Content from the VIP Rewards Club.

13.2 The Creative Memories website and/or Content posted to it may contain links and pointers to websites maintained by third parties which websites are not under the control of Creative Memories and Creative Memories is not responsible for the veracity, appropriateness, accuracy or contents of any linked website or any website link contained in any linked website. To the extent permitted by law, neither Your Consultant nor Creative Memories will be liable for any damages or loss arising in any way out of or in connection with or incidental to any information or third party service provided by or through any linked websites whether linked to or from the Creative Memories website and/or Content.

#### **14. YOUR CONSULTANT'S AND CREATIVE MEMORIES' RIGHTS**

14.1 Your Consultant and Creative Memories each reserve the right, with or without notice, to:

- (a) co-operate fully with any law enforcement authority in any jurisdiction in respect of any lawful direction or request to disclose the identity or other information in respect of anyone using the Creative Memories website from time to time;
- (b) moderate Content and in so doing, refuse to Disseminate any Content (in whole or in part) that either a Consultant or Creative Memories, using their sole and absolute discretion, regards in any way objectionable or in violation of any applicable law or these Terms;
- (c) edit any Member's Content;
- (d) alter, enhance, improve, modify, or restrict access to the Creative Memories website from time to time;
- (e) temporarily or permanently discontinue or suspend the Creative Memories website or any part thereof, at any time; and
- (f) at any time cancel, amend or suspend the VIP Rewards Club.

#### **15. INTELLECTUAL PROPERTY**

15.1 All intellectual property rights, including copyright, trademarks, designs or patents (whether registered or otherwise), in any information, logos, business processes, data and any other materials including all software, tools, know-how, equipment or processes, used in relation to the Creative Memories website and Content created and uploaded by Creative Memories or by Our personnel will remain Creative Memories' sole and exclusive intellectual property. You acknowledge and agree that You will not acquire any rights, title or interest in or to any of Creative Memories' intellectual property rights.

15.2 Any and all feedback, comments, compliments or criticisms that You provide Your Consultant or Creative Memories regarding the Creative Memories website or Content may be freely used by Your Consultant or by Creative Memories as each of them determines in their sole and absolute discretion without any right of attribution or compensation to You.

#### **16. DISCLAIMER - CREATIVE MEMORIES WEBSITE**

16.1 Creative Memories provides the Creative Memories website and Content on an 'as is' and 'as notified' basis without any warranties of any kind, express, implied or statutory as to their accuracy or otherwise.

16.2 Members must satisfy themselves through their own enquiries as to the quality or fitness for purpose of any Content.

16.3 Without limiting the foregoing, and subject to clause 17 below, You acknowledge that neither Your Consultant nor Creative Memories:

- (a) is required to or does check the truth or currency of the Content that Members create and upload to the VIP Rewards Club website;
- (b) controls, endorses, approves or warrants to the Member the merchantability or fitness for any particular purpose of any of the Content;

- (c) warrants to the Member that anything in the Creative Memories website or any third-party site referred to or connected via the site is accurate, complete or up to date and makes no performance warranty whatsoever concerning anything on or implied from them;
  - (d) endorses or recommends any Member or Content, including where the details of a Member are provided by a Consultant or by Creative Memories to other Members or otherwise become known using the Creative Memories website;
  - (e) is a party to any transactions or conversations between Members (if any); and
  - (f) warrants that the Creative Memories website, any Content or any information or communication it provides is or will be reliable, timely, error or fault free, complete or accurate;
- 16.4 You acknowledge that the Creative Memories website may experience interruptions and access difficulties from time to time and that Creative Memories will not be responsible for such interruptions or access difficulties and subject to clause 17, you agree that neither the Consultant nor Creative Memories shall be liable for any loss or damage whether directly or indirectly incurred by a Member or any third person as a result of any failure or delay in Creative Memories doing anything, including transmitting any information or removing any information from the Creative Memories website.

## **17. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY**

- 17.1 Except as otherwise set out in these Terms, all terms, conditions, warranties and representations, expressed or implied by (i) statute, (ii) common law or (iii) otherwise, in relation to the Creative Memories website and the Creative Memories Products are excluded to the fullest extent permitted by law.
- 17.2 You acknowledges that except for terms, conditions, warranties and representations that are not able to be excluded pursuant to clause 17.1, You have not relied on any terms, conditions, warranties and representations made by or on behalf of Your Consultant or by and behalf of Creative Memories in relation to the Creative Memories website or the Creative Memories Products and that there are no implied conditions or warranties herein or collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorised representative of Creative Memories).
- 17.3 Except as expressly provided in these Terms, neither the Consultant nor Creative Memories shall be liable to You, whether for negligence, breach of contract, misrepresentation or otherwise, for loss or damage incurred by You as a result of third party claims, or for special, direct, indirect or consequential damages or loss suffered by You (even if the Consultant or Creative Memories has been advised of the possibility of such losses), in connection with the provision of the Creative Memories Products for their use by You or any third party.
- 17.4 The parties agree that for the purposes of clause 17.4, indirect or consequential loss shall include, without limitation, loss of profit, goodwill, business opportunity, or anticipated savings or expense incurred in connection with or arising from:
- (a) the use or failure of, or inability to use, the Creative Memories website, Online Store, or related information technology systems;
  - (b) the cost of procurement of substitute goods, data, information, products, materials or services purchased or obtained or messages received or transactions entered into through or from the use of the Creative Memories website, Online Store, or related information technology systems;
  - (c) unauthorised access to or alteration of transmissions, materials or data from any Member, including Content;
  - (d) unauthorised access to or alteration of the Creative Memories website, Online Store, or related information technology systems;
  - (e) any other matter relating to the Creative Memories website, Online Store, or related information technology systems; or
  - (f) the use of the Creative Memories Products by any Member or a third party.
- 17.5 To the extent that the Consultant and Creative Memories are not permitted by law to limit its liability under clause 17.3, any liability of the Consultant or of Creative Memories in respect of the Member

is limited, at the option of either the Consultant or of Creative Memories as the context may require to:

- (a) the replacement of the Creative Memories Products;
- (b) the supply of equivalent goods; or
- (c) the repair of the Creative Memories Products.

17.6 Where the Member supplies any Creative Memories Products to any third party, the Member shall not give or make any undertaking, assertion or representation in relation to those Creative Memories Products beyond those validly provided by the Consultant to the Member, without the Consultant's prior written consent.

## **18. INDEMNITY**

18.1 You indemnify and hold harmless Your Consultant and Creative Memories and their parents, subsidiaries, affiliates, officers, directors, agents, employees (the "**Indemnitees**"), from and against any claims, demands, proceedings, costs, losses and damages (actual, special and consequential of every kind and nature, including all legal fees) incurred by the Indemnitees due to or arising out of or in any way related to:

- (a) a breach of these Terms by You;
- (b) Your acts, omissions or use of the Creative Memories website;
- (c) the Content that you create and upload;
- (d) Your feedback;
- (e) Your negligence; or
- (f) Your violation of any law or the rights of a third party.

## **19. TERMINATION**

19.1 In the event that You become a Consultant, Your Membership will be terminated and You will receive a pro-rata refund of Your Annual Fee paid.

19.2 Any of You, Your Consultant, or Creative Memories may terminate or suspend your Membership at any time, with or without reason, immediately upon written notice being given to the other parties.

19.3 If Your Membership is suspended for more than 28 (twenty eight) days, it will deemed to be terminated from the expiry of that 28 day period.

19.4 Neither Your Consultant nor Creative Memories gives any warranty as to the continuing availability of the VIP Rewards Club. Creative Memories may, in its absolute discretion, at any time cancel the VIP Rewards Club in whole (or in part) upon reasonable notice ("reasonable notice" being no less than 28 days). For the avoidance of doubt, if Creative Memories chooses to suspend or terminate the VIP Rewards Club, either Your Consultant or Creative Memories may terminate your Membership immediately upon written notice.

## **20. CONSEQUENCES OF TERMINATION**

20.1 If Your Consultant or Creative Memories terminates Your Membership, you will receive from Creative Memories a pro-rata refund of your Annual Fee paid.

20.2 Upon termination of Your Membership, Your Consultant will immediately deactivate Your Credentials and You will not be able to access the Online Store or any other part of the Creative Memories website to which access is otherwise restricted to Members.

20.3 Upon termination of Your Membership, any Credit towards Bonus Product accumulated by You shall automatically expire and be of no further value.

## **21. GENERAL**

21.1 **Force Majeure:** Neither Your Consultant nor Creative Memories will be liable for any failure or delay in the performance of its obligations to a Member if that failure or delay is due to circumstances beyond their reasonable control including, without limitation, any act of God or other

cause beyond their reasonable control including any mechanical, electronic, communications or third party supplier failure, industrial action, war, civil commotion or unrest, acts of terrorism, tempest, climatic or environmental conditions.

- 21.2 **Assignment:** Your Membership is personal to You and You may not assign or transfer Your Membership or any of Your rights or obligations under these Terms without the prior written consent of both Your Consultant and Creative Memories, which may be given or withheld by either party using its sole discretion. Your Consultant and Creative Memories may each assign their respective rights or obligations under these Terms at any time without notice to You.
- 21.3 **Waiver:** Any waiver or failure by either Your Consultant or by Creative Memories from time to time to require performance by You of any of Your obligations under these Terms shall not affect the right to enforce any provision of these Terms at a subsequent time.
- 21.4 **Notices:** Notices to You under these Terms may be made by the relevant party posting the notice on the Creative Memories website. This is in addition to any other mode of service permitted by law including email, post, fax.
- 21.5 **Survival:** Following termination of your Membership, clauses 10.3 to 10.7, 14.1(a), 15, 17, 18 and 20, together with other provisions that are by their nature intended to survive, will remain in effect.
- 21.6 **Decisions:** Subject to these Terms, any decision taken by Your Consultant or by Creative Memories in connection with any aspect of the VIP Rewards Club will be binding and final on each Member. Decisions made by Creative Memories will prevail over decisions made Your Consultant.
- 21.7 **Entire agreement:** For the avoidance of doubt, in respect of the Member, these Terms are the entire agreement between the three parties in respect of the VIP Rewards Club, and supersede and replace any and all previous terms and conditions in connection with the VIP Rewards Club.
- 21.8 **Severability:** If any clause of these Terms, or any part of any clause, is or becomes illegal, invalid or unenforceable, then that part shall be severed and the remainder of the Terms shall continue in force. Terms importing the singular include the plural and vice versa. The words "include" and "including" and other cognate words and expressions are to be construed without limitation. References to persons and people include incorporated entities.
- 21.9 **Governing Law:** This Agreement shall be governed in all respects by the laws of the State of New South Wales. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales.