

SIMX SOFTWARE LICENSE AND SERVICE TERMS

These Software License and Service Terms (this “**Agreement**”) shall govern the provision of certain paid software licenses and services from SimX, Inc., a Delaware corporation (“**SimX**”) to the user thereof (“**Customer**”). SimX and Customer are each referred to individually as a “**Party**” and collectively as the “**Parties.**” **This Agreement shall govern the rights and responsibilities of SimX and Customer in relation to the SimX Products vis-à-vis one another, even if Customer purchased the SimX Products from a Distributor.**

ARTICLE 1. DEFINITIONS

Capitalized terms not otherwise defined in this Agreement have the definitions set forth below in this Article 1:

1.1 “**Affiliate,**” with respect to a Party, means a corporation, partnership or other entity controlling, controlled by or under common control with such Party, but only so long as such, control continues to exist. For purposes of this definition, “**control**” means ownership, directly or indirectly, of at least fifty percent (50%) of the voting rights in such entity (or, in the case of a non-corporate entity, equivalent rights).

1.2 “**Confidential Information**” has the meaning set forth in Section 6.1.

1.3 “**Content**” means text, images, audio, video, audio-video, data and other information in any form or media whether now known or later devised.

1.4 “**Custom Scenario**” means a Scenario customized using Customer Case Content.

1.5 “**Customer Case Content**” means the Content provided by Customer to SimX, to be integrated by SimX into the Custom Scenarios, including by way of example any educational material, medical case study distinctions, diagnostic decision-making assessments and relevant hierarchical processing criteria.

1.6 “**Customer Infrastructure**” has the meaning set forth in Section 4.1.

1.7 “**Customer Order Effective Date**” has the meaning set forth in the applicable Customer Order.

1.8 “**Customer Order Form**” means the order form pursuant to which Customer orders the SimX Products.

1.9 “**Customer Order**” means a completed Customer Order Form executed by the Customer Project Manager and either SimX or a Distributor, as applicable.

1.10 “**Customer Project Manager**” means the individual or individuals designated by Customer as the authorized signatory to bind Customer to this Agreement and to all subsequent Customer Orders.

1.11 “**Customer Technical Contact**” means the individual or individuals designated by Customer as the authorized contact for communications regarding the Support Services.

1.12 “**Customer-Provided Third-Party Software**” means third party software that is part of the SimX minimum requirements set forth in the Documentation.

1.13 “**Deliverables**” means the specific work product to be developed under an SOW for Development Services.

1.14 “**Designated Machine**” means the machine or machines enabled to access the SAAS Service by use of the Learner Client.

1.15 “**Development Services**” means the services set forth in a SOW with respect to SimX’s development of a Custom Scenario based on Customer Case Content.

1.16 “**Distributor**” means an authorized distributor and reseller of the SimX Products.

1.17 “**Documentation**” means the textbooks, user guides, operating manuals, training materials, and technical specifications for the SAAS Service or On-Prem Software that SimX generally makes available to its Customers for the SAAS Service or On-Prem Software and provides to Customer under this Agreement.

1.18 “**Effective Date**” shall have the meaning set forth on the signature page of this Agreement.

1.19 “**FERPA**” means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed to protect the privacy of students' education records.

1.20 “**Hardware Product**” has the meaning ascribed to the term in Exhibit B attached hereto.

1.21 “**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, as amended, the Health Information Technology for Economic and Clinical Health Act, Division A, Title XIII of the and including the American Recovery and Reinvestment Act of 2009.

1.22 “**Implementation Plan**” means the plan for Implementation Services, as further described in the applicable SOW.

1.23 “**Implementation Services**” means the implementation, installation, integration and related services to be provided by SimX set forth in Exhibit A and the applicable Implementation Plan.

1.24 “**Intellectual Property Right**” means means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.25 “**Learner Client**” means the computer software in machine executable object code form to be installed on a Licensed Learner Device provided by Customer, at its sole expense, to enable Permitted Users to participate within the virtual environment.

1.26 “**Learner Device**” means a device that meets the SimX minimum requirements for the Learner Client set forth in the Documentation and is identified as compatible with the SAAS Service within the Documentation.

1.27 “**Licensed Learner Device**” means a Learner Device that has been enabled on a Designated Machine and on which the Learner Client is installed.

1.28 “**Moderator Client**” means the SimX computer programs installed locally by Customer that enable users to interact with Scenarios.

1.29 “**On-Prem Software**” means optional software add-on to the SAAS Service that enables use of the Moderator Client, Scenarios, and Learner Client without requiring always-on network access to the SimX cloud-based software-as-a-service platform, if and to the extent generally made available to SimX customers upon request as of the date of the applicable Customer Order, which software is comprised of (without limitation) proprietary SimX server-based software to be installed on machines operated by or on behalf of Customer.

1.30 “**Open Source**” means software or similar subject matter that is distributed under an open source license such as (by way of example only) the Apache License, BSD License, MIT License, or any other license identified as an open source license by the Open Source Initiative.

1.31 “**Permitted User**” means (a) any student, trainee, employee or independent contractor of Customer or its Affiliates; or (b) non-employee physicians or other medical professionals or trainees, in each case that are authorized by Customer or its Affiliates to access the SAAS Service or the On-Prem Software.

1.32 “**SAAS Service**” means the cloud-based software-as-a-service offering generally made available by SimX on a subscription basis to its customers as of the Customer Order Effective Date that provides education and training and is comprised of (without limitation) proprietary SimX server-based software, the Moderator Client, Scenarios, and the Learner Client.

1.33 “**Scenarios**” means exercise modules for educational and training purposes, including Custom Scenarios. By way of example, in the healthcare setting, a Scenario may provide education or training in medical case management or diagnostic assessment capabilities.

1.34 “**SimX Marketplace**” means the online site accessible through the SAAS Service and through which Custom Scenarios can be ordered.

1.35 “**SimX Products**” means, collectively, all SimX Professional Services, Software, and the SAAS Services.

1.36 “**SimX Professional Services**” means, individually and collectively, the Development Services, Support Services, Implementation Services, Training Services and any other consulting or professional services, in each case that is ordered by Customer under a Customer Order, but excluding the SAAS Service.

1.37 “**Software**” means the On-Prem Software or the software portions of the SAAS Service, as applicable

1.38 “**Statement of Work**” or “**SOW**” means each a statement of work attached to or referenced in a Customer Order setting forth the scope, Deliverables, acceptance criteria (if any) and other details pertaining to the Development Services or Implementation Services.

1.39 “**Subscription Term**” means, with respect to the SAAS Service or On-Prem Software, the duration of the rights to access and use such SAAS Service and On-Prem Software under this Agreement, as set forth in a Customer Order.

1.40 “**Support Services**” means the maintenance and support services set forth in Exhibit A.

1.41 “**Term**” means the term of this Agreement as set forth in Section 10.1.

1.42 “**Training Services**” means the training services set forth in Exhibit A.

1.43 “**Updates**,” means any bug fix, error correction, patch, or new version of or to the software portions of the SAAS Service or the On-Prem Software, in each case that SimX generally makes available to its customers without additional charge.

1.44 “**Usage Data**” means data generated by SimX through Permitted User’s usage of the SAAS Service or the On-Prem Software, including through usage of the Moderator Client in the management and assessment of training exercise Scenarios.

ARTICLE 2. ACCESS TO AND USE

2.1 **SAAS Service.** Subject to the terms of this Agreement and Customer’s compliance therewith, if the SAAS Service is ordered by Customer pursuant to a Customer Order, then during the applicable Subscription Term, SimX authorizes Customer to: (a) allow Permitted Users to access the SAAS Service, including access and use of Scenarios as part of the SAAS Service; (b) install and use the Moderator Client only as part of the SAAS Service; and (c) install and use the Learner Client only on the Licensed Learner Devices for which licenses are ordered under such Customer Order and only in accessing and using the SAAS Service. Customer’s license to use the Learner Client on a Licensed Learner Device may be transferred from the Licensed Learner Device on which the Learner Client was initially installed to another Licensed Learner Device on a one-time basis. Upon written request of Customer, SimX may approve and provide Customer additional transfers of the Learner Client to other Licensed Learner Devices.

2.2 **On-Premises Software License Option.** Subject to the terms of this Agreement and Customer’s compliance therewith, if an On-Prem Software license is ordered by Customer pursuant to a Customer Order, then during the applicable Subscription Term, SimX hereby grants to Customer a nonexclusive, non-transferable, non-sublicensable license to allow Permitted Users access to the On-Prem Software, including access and use of the Scenarios ordered pursuant to a Customer Order or through the SimX Marketplace, as part of the On-Prem Software.

2.3 **Documentation.** Subject to the terms of this Agreement and Customer’s compliance therewith, if the SAAS Service is ordered by Customer pursuant to a Customer Order, then during the applicable Subscription Term, SimX hereby grants to Customer a nonexclusive, non-transferable, non-sublicensable license to allow Permitted Users access to the Documentation in connection with their use of the SAAS Service or if included in a Customer Order, the On-Prem Software.

2.4 Third Party Software; Open Source.

(a) **Third Party Terms.** Third party software included within the SAAS Service or On-Prem Software may be subject to additional terms, conditions and limitations imposed by the relevant third party licensors (“**Third Party Terms**”). Notwithstanding anything to the contrary in this Agreement, Customer will comply with the Third Party Terms and, if any Third Party Terms conflict with the terms and conditions of this Agreement with respect to such third party software, then the Third Party Terms will control (and will resolve any conflict or inconsistency) with respect to such third party software. From time-to-time, SimX may substitute different third party software, so long as such substitution does not materially reduce the functionality or performance of the SAAS Service or On-Prem Software.

(b) **Open Source.** Without limitation of the generality of Section 2.4(a), Customer acknowledges that the SAAS Service or On-Prem Software may contain Open Source software. To the extent any Open Source license requires that SimX provide Customer any rights with respect to such Open Source that are inconsistent with the licenses granted in this Agreement (or any limitations or restrictions on those licenses as set forth in this Agreement), then the applicable Open Source license will take precedence over those licenses (and such limitations and restrictions), but solely with respect to the applicable Open Source component software. Customer acknowledges that the Open Source license is solely between Customer and the applicable third party licensor of the Open Source and Customer will comply with the terms of any such Open Source license.

2.5 **Permitted Users.** Customer will ensure that all Permitted Users comply with the terms and conditions of this Agreement with respect to access and use of the SAAS Service or the On-Prem Software, and protection of SimX’s Confidential Information, and Customer will be responsible for the acts and omissions of Permitted Users in connection with access to and use of the SAAS Service or the On-Prem Software and compliance with the obligations set forth in this Agreement with respect to SimX’s Confidential Information. Without limitation of the generality of the foregoing, any act or omission by a Permitted User that would constitute a breach of this Agreement if by Customer will be deemed a breach of this Agreement by Customer.

2.6 **License Restrictions.** Customer will not (and will ensure that Permitted Users do not), except as expressly authorized by SimX in the installation of the Software licensed under a Customer Order: (a) copy any Software or Documentation other than for accessing or providing Permitted Users access to the Software as expressly permitted under Section 2.1 and Section 2.2; (b)

modify, adapt, or create derivative works of any Software or Documentation; (c) rent, lease, loan, resell, transfer, sublicense, distribute, disclose or otherwise provide any Software or Documentation to any third party other than providing use of the Software to Permitted Users as expressly permitted under Section 2.1 and Section 2.2; (d) decompile, disassemble or reverse-engineer the SAAS Service or any Software, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the SAAS Service or the Software, except to the extent expressly permitted by applicable law notwithstanding a contractual prohibition to the contrary; (e) exceed the scope of permitted installations, reinstallations or duplicate installations of the Software; (f) provide to any third party the results of any benchmark tests or other evaluations of the SAAS Service or any Software without SimX's prior written consent; (g) attempt to disable or circumvent any license key or other technological mechanisms or measures intended to prevent, limit or control use or copying of, or access to the SAAS Service or any Software; (h) remove or obscure any copyright, trademark, patent, or other proprietary notices, legends or symbols from the SAAS Service or any Software or Documentation; (i) otherwise access or use the SAAS Service, Software or Documentation except as expressly authorized in this Agreement; or (j) encourage or assist any third party to do any of the foregoing.

2.7 Custom Scenarios.

(a) SimX is granted the rights and licenses set forth in Exhibit C with respect to Custom Scenarios.

(b) Except for the rights and licenses expressly granted to SimX by Customer hereunder, Customer retains all of its rights in and to the Customer Case Content.

(c) Customer represents and warrants that Customer has obtained and will continue to maintain all rights, title and interest in and to the Customer Case Content (including obtaining all required consents and authorizations) to grant the rights and licenses set forth in this Agreement. In addition, Customer has and will be responsible for ensuring that the Customer Case Content, and all use by or on behalf of Customer of Customer Case Content, is and will remain in compliance with applicable laws throughout the Subscription Term.

ARTICLE 3. SIMX PROFESSIONAL SERVICES AND HARDWARE PRODUCT SUPPLY

3.1 **SimX Professional Services.** Subject to the provisions of this Agreement, including Article 3, SimX will use reasonable efforts to provide to Customer those

SimX Professional Services for which SimX is responsible as set forth in each Customer Order. SimX will not be responsible for any delays or other non-performance if caused in whole or in part by any act or omission performed by or on behalf of Customer (other than by SimX). The sole liability of SimX, and Customer's sole remedy, for SimX's breach of its obligations with respect to SimX Professional Services is for SimX to do one of the following (at SimX's sole discretion): (a) re-perform the applicable SimX Professional Services in a manner that conforms to the foregoing obligations; or (b) terminate the non-conforming SimX Professional Services and refund the portion of the Fees paid by Customer for such non-conforming SimX Professional Services.

3.2 **Hardware Product Supply.** Subject to the provisions of this Agreement, including Article 3 and Exhibit B, should Customer order Hardware Products from SimX, SimX will use reasonable efforts to supply the Hardware Products set forth in each Customer Order in accordance with the provisions of Exhibit B. SimX will not be responsible for any delays or other non-performance if caused in whole or in part by any act or omission performed by or on behalf of Customer (other than by SimX).

3.3 **No Conflicts.** Notwithstanding the foregoing, Customer agrees, that SimX will not be restricted in any way from creating or developing case studies, Scenarios, virtual environments, software, programs or training modules for third parties, which may be similar to a Custom Scenario, or Scenarios with similar Customer Case Content to the Custom Scenario.

3.4 **Ownership.** Except for the rights and licenses expressly granted to Customer by SimX under Section 2.1 and Section 2.2 of this Agreement, SimX retains all of its right, title and interest in and to the SAAS Service, On-Prem Software, Scenarios, Documentation and any other software, technology, inventions, processes, works of authorship, information, data or other materials developed by SimX alone or jointly with others, or otherwise made available by SimX to Customer hereunder, together with all intellectual property rights in or pertaining to any of the foregoing, and no other rights are granted to Customer nor will Customer acquire any such rights, whether by implication, operation of law or otherwise.

ARTICLE 4. CUSTOMER RESPONSIBILITIES

4.1 **Customer Infrastructure.** Except for SimX's obligations, if any, to supply Hardware Products under a Customer Order, Customer is solely responsible for procuring, supporting, securing, connecting and maintaining any hardware, software, operating systems, networks, databases, connectivity, data center resources, telecom resources, or other systems or infrastructure needed

to install and operate the SAAS Service, On-Prem Software, or any other subject matter made available hereunder and Customer is solely responsible for procuring, supporting, securing, connecting and maintaining all of the foregoing, including as may be more specifically identified in the applicable Customer Order and/or the Documentation (collectively, the “**Customer Infrastructure**”). Notwithstanding anything to the contrary, SimX will have no responsibility with respect to any failure, malfunction, contaminants, power loss or interruption that is due in whole or in part to the Customer Infrastructure or Customer’s failure to procure, support, secure, connect or maintain adequate Customer Infrastructure, or for any security breach, loss of data, or for any injury, property damage, or similar event related to Customer Infrastructure.

4.2 **Data Integrity and Data Standards.**

(a) Customer is solely responsible for ensuring the integrity of the Customer Case Content and any other Content provided to SimX, or that Customer inputs into the SAAS Service or any Software, and for ensuring that all such Content is compliant with SimX’s template standards or other mutually agreed to interface standards. Notwithstanding anything to the contrary, SimX will have no responsibility with respect to any failure, malfunction, contaminants, power loss or interruption that is due to Customer Case Content, other data or information input into the SAAS Service or any Software by Customer, or Customer’s failure to comply with applicable standards, or for any security breach, loss of data, or similar event or for any injury, property damage or improper medical case management, medical treatments or diagnostic assessments related to the foregoing. Any risk arising out of or relating to Customer Case Content or any other Content provided to SimX that may result in improper medical treatment, injury, property damage, or other damages is entirely allocated to Customer.

(b) Customer acknowledges that, as between the Parties, all Customer-provided information and data are the responsibility of Customer. Customer acknowledges that SimX is not responsible for determining the type of data or information Customer provides. Customer agrees not to disclose or otherwise share through the SAAS Service or any Software or otherwise with SimX any information relating to identified or identifiable individuals, including Protected Health Information subject to the Health Insurance Portability and Accountability Act (“**HIPAA**”) (where “Protected Health Information” or “PHI” has the meaning set forth in HIPAA), (collectively, “**Personal Information**”) or any information relating to protected student education records subject to the Family Educational Rights and Privacy Act (“**FERPA**”), unless pre-approved in writing by SimX.

4.3 **Antivirus and Firewall.** Customer is solely responsible for providing VPN and firewall protection, antivirus protection, and intrusion monitoring with respect to the Customer Infrastructure (collectively, “**Customer Security Measures**”). Notwithstanding anything to the contrary, SimX will have no responsibility with respect to any failure, contaminants or interruption that is due to the Customer’s failure to provide Customer Security Measures, or for any security breach, loss of data, or similar event related to the Customer Security Measures (or lack thereof).

4.4 **Access Credentials.** The SAAS Service and On-Prem Software provide the ability for Customer to assign user IDs and passwords to Permitted Users (“**Access Credentials**”). Customer will provide Access Credentials only to Permitted Users, and will require all Permitted Users to protect their Access Credentials from unauthorized use or disclosure. Customer is solely responsible for any unauthorized use or disclosure of any Access Credentials. Notwithstanding anything to the contrary, SimX will have no responsibility with respect to any failure, interruption, security breach, loss of data, or similar event related to unauthorized use or disclosure of Access Credentials.

4.5 **Cooperation.** Customer acknowledges that Customer’s timely provision of (and SimX’s access to) Customer’s equipment, assistance, cooperation, and complete and accurate information and data from the Customer Technical Contact, and Customer’s officers, agents and employees (“**Cooperation**”) is essential to the performance of the SimX Professional Services and the provision of the SAAS Service and On-Prem Software, and Customer agrees that SimX will not be liable for any deficiency in performing the SimX Professional Services or providing the SAAS Service or On-Prem Software if such deficiency results in whole or in part from Customer not providing such Cooperation.

4.6 **Customer Case Content; Decision-making.** Customer acknowledges that, as between the Parties, all Customer Case Content including educational material, medical case study distinctions, and diagnostic decision making assessment criteria are the responsibility of Customer. Customer acknowledges that SimX is not responsible for determining the type of, or criteria needed, for a medical case and diagnostic decision-making assessment, nor is SimX responsible for deficiencies in or performance of the steps, procedures or other aspects of the Scenarios. SimX does not act upon any Customer Case Content, or data generated by or for Customer or Permitted User in any professional capacity (including clinical decision-making) or determine the type of procedures appropriate for Customer to make such assessments. Customer must determine such assessments. Nothing in the SAAS Service, On-Prem Software, Scenarios, Documentation or other information, results or other

Deliverables made available under or in connection with this Agreement are intended to substitute for Customer or health care providers' independent clinical and business judgment. Without limiting the foregoing, as between SimX and Customer, Customer remains solely responsible for ensuring the quality, sufficiency and legality of the clinical and business judgments, medical case management and diagnostic assessments, and other decisions made using the SAAS Service, On-Prem Software, Scenarios, Documentation or other information, results, or Deliverables made available under or in connection with this Agreement. Any risk arising out of or relating to Scenarios that may result in improper medical treatment, injury, property damage, or other damages is entirely allocated to Customer.

ARTICLE 5. PAYMENT TERMS

5.1 **Fees.** In consideration for the rights and licenses granted in this Agreement and for the SimX Professional Services to be provided under this Agreement, Customer will pay the fees and other amounts due to SimX, if any, as set forth in each Customer Order (including under each Customer Order) (collectively, the "**Fees**"). All Fees are non-refundable and non-creditable. Customer will pay all Fees to SimX in U.S. dollars in accordance with the payment terms specified in the Customer Order. Late payments will be subject to interest at the rate of 1.5% per month or the maximum rate allowed by applicable law, whichever is higher.

5.2 **Taxes.** The Fees do not include, and Customer will pay in addition to the Fees, all taxes, duties and levies imposed by all foreign, federal, state, local or other taxing authorities (including export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, other than taxes imposed or based on SimX's net income. All amounts payable hereunder by Customer, will be paid without deduction or withholding for or on account of any present or future tax, duty or levy imposed by any taxing authority.

5.3 **Audits.**

(a) Once each calendar year, upon at least ten (10) days' prior written notice, SimX may audit Customer and Permitted Users to confirm Customer and such Permitted Users are in compliance with the terms, conditions and limitations of usage imposed under this Agreement, the Documentation and Third Party Terms. Any such audit will be conducted during regular business hours, will not unreasonably interfere with Customer's business and will comply with Customer's reasonable security procedures. Customer will (and will ensure that the Permitted Users) provide SimX with reasonable access to

all physical hardware, Usage Data, relevant records, and facilities reasonably necessary to conduct the audit.

(b) SimX may audit all reported electronic communications necessary for accessing and using the SAAS Service, any Software or Documentation, including but not limited to, installation commands, usage information, meta-data and log files routinely communicated between the Customer system and the SimX cloud-based software-as-a-service platform ("**Routine Communications**"), to confirm Customer and such Permitted Users are in compliance with the terms of this Agreement.

(c) If an audit reveals usage that exceeds the licenses obtained by Customer, the one-time Learner Client installation policy (set forth in Section 2.1), or any other underpayment of Fees, then SimX will invoice Customer, and Customer will promptly pay SimX any underpaid Fees. If the underpayment exceeds five percent (5%) of the Fees paid during the applicable audit period, then Customer will also pay SimX's reasonable costs of conducting the audit.

ARTICLE 6. CONFIDENTIALITY

6.1 **Confidential Information.** "**Confidential Information**" means all proprietary, technical or business information, ideas, materials, know-how or other subject matter disclosed or otherwise made available by one Party to the other Party that: (a) if disclosed in writing, is marked "confidential" or "proprietary" at the time of such disclosure; (b) if disclosed orally, is identified as "confidential" or "proprietary" at the time of such disclosure, and is summarized in a writing sent by the disclosing Party to the receiving Party within thirty (30) days after any such disclosure; or (c) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Confidential Information of SimX includes the SAAS Service, On-Prem Software, Scenarios and the Documentation.

6.2 **Use and Disclosure Restrictions.** The Party receiving Confidential Information ("**Recipient**") agrees: (a) to maintain the Confidential Information of the Party disclosing such information (the "**Discloser**") in strict confidence; (b) not to disclose such Confidential Information to any third parties; and (c) not to use any such Confidential Information for any purpose other than to exercise its rights or perform its obligations under this Agreement. Recipient will treat Confidential Information of the Discloser with the same degree of care as it accords to its own Confidential Information, but in no event with less than reasonable care. Recipient may disclose the Confidential Information of Discloser to its directors,

officers, and employees (collectively, “**Representatives**”), who have a bona fide need to know such Confidential Information, provided that each such Representative is bound by a legal obligation as protective of the other Party’s Confidential Information as those set forth herein. Customer may also disclose the Confidential Information comprised of the SAAS Service, Software and Documentation to its Permitted Users and such Permitted Users will be deemed Customer’s Representatives, in accordance with Article 2 and the preceding sentence. Accordingly, Customer is responsible for ensuring Permitted Users comply with the obligations under this Section Article 6. Recipient’s obligations under this Section 6.2 will continue in effect for a period of three (3) years from the date of last disclosure of Confidential Information by Discloser, except that Customer’s obligations under this Article 6 will continue in effect in perpetuity with respect to the SAAS Service, and any Software and Documentation.

6.3 **Exclusions.** The obligations of Recipient under Section 6.2 will not apply to any Confidential Information that: (a) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of Recipient (or any of its Representatives, affiliates, or agents) or any third party subject to any use or disclosure restrictions with respect to such Confidential Information; (b) was known by or lawfully in the possession of Recipient, prior to receiving such information from Discloser, without restriction as to use or disclosure; (c) is rightfully acquired by Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (d) is independently developed by Recipient without access, use or reference to any Confidential Information of Discloser. Notwithstanding anything to the contrary stated in this Agreement, nothing in this Agreement restricts SimX’s rights to collect, use, share, disclose and otherwise process Usage Data (i) to perform the activities contemplated by this Agreement; and (ii) for purposes of developing and improving SimX Products and services so long as the disclosure or sharing of Usage Data for development or improvement is not identified with Customer or any individual person.

6.4 **Authorized Disclosures.** Notwithstanding anything to the contrary, the Recipient may disclose Confidential Information provided by the Discloser: (a) to its financial, accounting and legal advisors with a need to know for the purpose of providing services to the Recipient; (b) as and to the extent required by applicable law or regulation, or by the listing of similar rules of the stock exchange on which the securities of the Recipient may be listed (provided that, prior to such disclosure, the Recipient, to the extent permitted by law, shall provide written notice of such request to the Discloser to allow the Discloser to seek to redact or otherwise limit the scope of such disclosure); and (c) as required to be disclosed pursuant to any judicial or governmental request, requirement or order,

provided that the Recipient takes reasonable steps to give the Discloser sufficient prior notice in order to contest or limit such request, requirement or order.

6.5 **Return or Destruction of Confidential Information.** Upon termination of the Agreement or support and maintenance, Recipient will promptly return to Discloser or, at Discloser’s option, destroy all tangible items and embodiments containing or consisting of Discloser’s Confidential Information and all copies thereof (other than backup or archival copies) and upon request of Discloser, provide written certification of such destruction or return by an authorized person.

6.6 **Injunctive Relief.** Recipient agrees that, due to the unique nature of the Confidential Information, the unauthorized disclosure or use of the Confidential Information may cause irreparable harm and significant injury to Discloser, the extent of which will be difficult to ascertain and for which there may be no adequate remedy at law. Accordingly, Recipient agrees that Discloser, in addition to any other available remedies, will have the right to seek an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Article 6, without the necessity of posting any bond or other security. Recipient will notify Discloser in writing immediately upon Recipient’s becoming aware of any such breach or threatened breach.

ARTICLE 7. **WARRANTIES**

7.1 **Mutual Warranties.** Each Party represents and warrants to the other Party that the execution, delivery and performance of this Agreement does not and will not contravene or constitute a default under, and is not and will not be inconsistent with, any judgment decree or order, or any contract, agreement or other undertaking, applicable to such Party.

7.2 **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE Article 7, THE SAAS SERVICE, ON-PREM SOFTWARE, DOCUMENTATION, SIMX PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, COMPONENTS OR SERVICES PROVIDED HEREUNDER ARE PROVIDED “AS IS” WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, EXPRESS OR IMPLIED. TO THE FULL EXTENT PERMITTED BY LAW, SIMX DISCLAIMS ALL WARRANTIES AND CONDITIONS OTHER THAN AS EXPRESSLY SET FORTH IN THIS ARTICLE Article 7, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF

DEALING OR TRADE USAGE. WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING, SIMX DOES NOT WARRANT OR PROVIDE ANY CONDITION THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED.

ARTICLE 8. INDEMNIFICATION

8.1 SimX Intellectual Property Indemnification. SimX will defend and/or settle any claim, demand, suit or proceeding (“**Claim**”) brought against Customer by a third party (except to the extent based on an Excluded Matter) alleging that the Software obtained by Customer under a Customer Order infringes or misappropriates a third party’s Intellectual Property Rights in the United States, and SimX will pay all damages finally awarded by a court of competent jurisdiction or settlement amounts entered into to the extent based upon such a Claim, subject to the other provisions of this Article 8 and Article 9 below. Claims for which SimX agrees to defend Customer are referred to herein as “**SimX Indemnified Claims.**”

8.2 Limitations. Notwithstanding the foregoing, SimX has no obligation to defend any Claim to the extent based on: (a) use of the SAAS Service, any Software or Documentation in a manner that is not permitted under the Agreement or that is inconsistent with the Documentation; (b) modifications to the SAAS Service, Software or Documentation made by anyone other than SimX or a third party acting at SimX’s direction; (c) the combination of the SAAS Service or Software with Customer Infrastructure or other hardware, software, services or materials not provided by SimX where the infringement or misappropriation would not occur but for such combination or where all claims of the Intellectual Property Rights being asserted by the applicable third party are not fully embodied by the SAAS Service or any Software itself; (d) all portions of the SAAS Service, Software or Documentation that are based on or derived from Customer Case Content if the infringement or misappropriation would not have arisen but for the Customer Case Content; (e) Customer’s chosen manner of using the SAAS Service or Software where other non-infringing methods of use are available; (f) Customer’s continued use of an allegedly infringing version of the SAAS Service, Software or Documentation after SimX has provided Customer with a non-infringing new version of any of the foregoing; or (g) any version of the SAAS Service or Software that is no longer supported by SimX ((a) through (g), collectively, “**Excluded Matters**”). If a SimX Indemnified Claim is brought or any portion of the SAAS Service, On-Prem Software, Documentation or any other subject matter made available by SimX hereunder may be enjoined (as determined by SimX), SimX may, at its option

and expense, modify the affected subject matter so that it no longer infringes or misappropriates third party rights, or replace it with functionally comparable subject matter. If SimX determines that neither option is reasonably feasible, SimX may terminate Customer’s rights hereunder with respect to such subject matter and refund a pro-rated portion of the Fees paid for the affected subject matter less an amount for Customer’s use computed using straight-line depreciation over the applicable term of the subscription for the portion of the SAAS Service that is allegedly infringed. The obligations set forth in this Article 8 constitute Customer’s sole and exclusive remedy, and SimX’s entire liability, with respect to any Claims that the Software infringes any third party’s Intellectual Property Rights.

8.3 Customer Indemnification. Upon SimX’s written request, Customer will defend and/or settle any and all Claims (including Claims alleging ordinary negligence resulting in personal or bodily injury, damage to tangible property or other product liability) brought against SimX by a third party arising out of or relating to: access or use of the SAAS Service, On-Prem Software, Scenarios, Documentation, or other subject matter made available to Customer hereunder (except to the limited extent of a SimX Indemnified Claim); access or use of the Hardware Products, Learner Devices or any other products or services accessed or used in connection with any of the foregoing; Claims, disputes or controversies between Customer, Permitted Users and third parties (e.g., with respect to sufficiency or performance of training or adequacy of warnings); and the Excluded Matters. Customer will pay all damages finally awarded by a court of competent jurisdiction or settlement amounts entered into as a result of such Claims. Without limiting the foregoing, as between the Parties, with the sole exception of SimX Indemnified Claims, Customer acknowledges and agrees that Customer is solely responsible and liable for any loss, damage, injury, damage to tangible property, or other liability arising out of or relating to the use of the products and services made available hereunder or any other products or services used in connection therewith, including any SimX provided Hardware Products.

8.4 Indemnification Process. Each Party’s indemnity obligations set forth in this Article 8 are conditioned upon the Party seeking indemnification (a) providing prompt written notice to the other Party of any Claim for which indemnification is required; (b) giving the indemnifying Party sole control of the defense and/or settlement of the Claim (provided that no settlement may be entered into by a Party that makes any admission of liability by the other Party without such Party’s prior written consent); and (c) providing the indemnifying Party full cooperation and assistance with respect to the defense and settlement at the indemnifying Party’s cost and expense.

ARTICLE 9. LIMITATION OF LIABILITY

TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, (A) SIMX WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ARISING FROM LOSS OF USE, LOSS OF DATA, LOST PROFITS, BUSINESS INTERRUPTION, OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES, OR RELATING TO PROCURING OR USING ANY HARDWARE PRODUCTS IN CONNECTION WITH THE SUBJECT MATTER HEREOF) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, AND REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING ORDINARY NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF WHETHER SIMX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; (B) SIMX'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO ANY HARDWARE PRODUCTS PROVIDED TO CUSTOMER OR ANY SERVICES PERFORMED IN CONNECTION THEREWITH WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR SUCH HARDWARE PRODUCT, REGARDLESS OF WHETHER SUCH LIABILITY WAS FORESEEABLE, AND REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING ORDINARY NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF WHETHER SIMX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; AND (C) EXCEPT FOR CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT; CUSTOMER'S BREACH OR OTHER LIABILITY ARISING UNDER SECTION 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7(c), 4.2, 4.3, 4.4, 6, OR ANY PROVISION OF ARTICLE 7; OR EITHER PARTY'S LIABILITY ARISING UNDER ARTICLE 8, EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF WILL NOT EXCEED THE FEES PAID BY CUSTOMER TO SIMX IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY, IN EACH OF THE FOREGOING CASES (A), (B) AND (C), REGARDLESS OF WHETHER SUCH LIABILITY WAS FORESEEABLE, AND REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING ORDINARY NEGLIGENCE) OR OTHERWISE, AND REGARDLESS

OF WHETHER SIMX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

ARTICLE 10. TERM AND TERMINATION

10.1 **Agreement Term.** This Agreement will commence upon the Effective Date and will remain in effect until the expiration of all Customer Orders, unless terminated earlier pursuant to this Article 10.

10.2 **Customer Order Term.** Each Customer Order will specify the corresponding Subscription Terms for the SAAS Service or On-Prem Software, as applicable, together with the duration of any accompanying SimX Professional Services, unless terminated earlier pursuant to this Article 10. If no such term is specified, then the rights and licenses associated with the SimX Products will expire or terminate concurrently with the earlier to occur of the expiration or termination of this Agreement.

10.3 **Termination.** Either Party may terminate this Agreement (in whole or in part, including with respect to any Customer Order) by written notice to the other Party if (a) the other Party materially breaches this Agreement and does not cure the breach within thirty (30) days of receiving notice of the breach; or (b) the other Party ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, avails itself of or becomes subject to any petition or proceeding under any statute of any state or country relating to insolvency or the protection of the rights of creditors, or any other insolvency or bankruptcy proceeding or other similar proceeding for the settlement of the other Party's debt is instituted. In addition and without limitation of the foregoing termination rights, SimX may immediately terminate this Agreement (in whole or in part, including with respect to any Customer Order) by written notice to Customer if Customer breaches any of the provisions of Sections 2.1, 2.2, 2.3, 2.6, 2.5, 2.6, 2.7(c), 4.2, 4.3 or 4.4, or Article 6 or Article 11. Without limiting the foregoing, if Customer fails to pay any Fees when due, SimX may suspend the rights and licenses granted under this Agreement and any SimX Professional Services until Customer pays such Fees.

10.4 **Suspension.** SimX will have the right to suspend Customer's access to the SAAS Service or the On-Prem Software if (i) SimX determines in its sole discretion that (A) Customer or a Permitted User is engaged in activities that have resulted in or are likely to cause impairment of functionality of the SAAS Service for other customers; (B) there is a threat or attack on any of SimX's technology, systems or services; (C) Customer's or any Permitted User's use of the SAAS Service or the On-Prem Software disrupts or poses a security risk to SimX or to any

other customer or vendor of SimX; (D) any Customer or Permitted User is using the SAAS Service or the On-Prem Software for fraudulent or illegal activities; or (E) SimX's provision of the SAAS Service or the On-Prem Software to Customer or any Permitted User is prohibited by applicable law; or (ii) any vendor of SimX has suspended or terminated SimX's access to or use of any third-party services or products required to enable Customer or its Permitted Users to access the SAAS Service or the On-Prem Software. SimX will have no liability for any damage, liabilities, losses (including any loss of use, loss of data, lost profits, or any business interruptions), or any other consequences that Customer or Permitted Users may incur as a result of any of the foregoing suspensions.

10.5 **Transition.** Upon termination or expiration of this Agreement (except in the event of a termination by SimX for cause pursuant to Section 10.3), at Customer's option and subject to Customer's continued payment of all applicable Fees, for a period of up to three (3) months: (a) the licenses granted to Customer under this Agreement will continue in effect, and (b) SimX will continue to provide the Support Services to Customer, in each case to the extent necessary to facilitate Customer's orderly transition to an alternative software solution. The terms and conditions of this Agreement will continue to apply during such transition period.

10.6 **Effect of Termination.** Upon any expiration or termination of this Agreement (or, if applicable, upon the expiration of the transition period described in Section 10.5), the rights and licenses granted to Customer hereunder will automatically terminate, and Customer will immediately cease using the SAAS Service, On-Prem Software and Documentation and return or destroy all copies thereof and other SimX Confidential Information in Customer's or any Permitted User's possession or control, and certify in writing the completion of such return or destruction. The following provisions will survive any expiration or termination of this Agreement: Article 1, Article 5, 6 (for the periods set forth therein), Article 7, Article 8, Article 9, Article 11 (for a period of four years following expiration or earlier termination), and Article 12; and Sections 2.7, 3.3, 3.4, 4.6, 10.4, 10.5 and 10.6.

ARTICLE 11. INSURANCE

Each Party will maintain insurance as follows: (a) commercial general liability insurance for bodily or property injury of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in annual aggregate, (b) products liability insurance of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in annual aggregate, (c) contractual or professional liability (i.e., errors and

omissions) insurance of at least One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in annual aggregate, (d) cyber insurance, including coverage for Internet liability issues related to confidentiality and hacking, of at least One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in annual aggregate, and (e) workers' compensation insurance covering such Party's employees and agents who engage in activities under this Agreement with limits of at least One Hundred Thousand Dollars (\$100,000) per occurrence.

ARTICLE 12. MISCELLANEOUS TERMS

12.1 **Interpretation.** For purposes of interpreting this Agreement, (a) unless the context otherwise requires, the singular includes the plural, and the plural includes the singular; (b) unless otherwise specifically stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section or paragraph; (c) the words "include" and "including" will not be construed as terms of limitation, and will therefore mean "including but not limited to" and "including without limitation"; (d) unless otherwise specifically stated, the words "writing" or "written" mean preserved or presented in retrievable or reproducible form, whether electronic (including email but excluding voice mail) or hard copy; (e) the captions and section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement; and (f) the references herein to the Parties will refer to their permitted successors and assigns.

12.2 **Dispute Resolution.** If there is any controversy, claim or dispute arising out of or relating to this Agreement or the breach thereof, whether based on contract, tort, statute or other legal or equitable theory (the "**Dispute**"), the Parties will first attempt to resolve such Dispute through good faith negotiations between executive-level representatives of each Party who have full authority to resolve the Dispute. If the Dispute remains unresolved ten (10) business days after such negotiations have commenced, then the Dispute will be settled by binding arbitration administered by JAMS in accordance with its applicable rules then in effect. The Agreement and its interpretation and validity will be governed by the substantive law of the State of California applicable to contracts made and to be performed within the State and without regard to the State's conflicts of laws rules that would result in the application of the laws of another jurisdiction, and without giving effect to the conflicts of law principles of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The location of the arbitration will be Santa Clara County,

California. The arbitration will be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16. The award of the arbitrator will be final and binding, and judgment on the award may be entered, confirmed and enforced in any court having jurisdiction thereof. Nothing in this Section 12.2 relief concerning the Dispute, including a temporary restraining order, a preliminary injunction or an order of attachment, either prior to or during negotiation or arbitration, in order to protect the interests of such Party.

12.3 **Solicitation.** Unless otherwise specified in a Customer Order, neither Party will directly solicit for hire any employee of the other Party whose work relates to the subject matter of this Agreement during the term of this Agreement and for twelve (12) months following the earlier of the termination of this Agreement and the termination of such employee's employment by the other Party. However, this obligation will not apply to or be breached by (a) advertising of open positions, participating in job fairs and comparable activities, or other forms of soliciting candidates for employment or contract opportunities that are general in nature, (b) responding to unsolicited inquiries about employment or contract opportunities or possibilities from headhunters or other agents, or (c) responding to unsolicited inquiries about employment or contract opportunities from any individual.

12.4 **Assignment.** Customer is not permitted to assign, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement without the prior written consent of SimX. SimX may assign, sell, transfer, delegate or otherwise dispose of this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Customer. Any purported assignment by a Party, except as permitted herein, will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

12.5 **Force Majeure.** Neither Party will be liable to the other for failure or delay in performing its obligations under this Agreement (other than the obligation to make payments) if such failure or delay is due to acts of any governmental body, war, insurrection, sabotage, or embargo; fire, flood or other Act of God; strike or other labor disturbance; interruption of or delay in transportation; unavailability of, interruption of or delay in telecommunications or third party services; epidemic, pandemic or other spread of disease; inability to obtain raw materials, supplies or power used in or equipment needed for performance of its obligations; or any other cause beyond such Party's reasonable control.

12.6 **Notices.** All notices required or permitted under this Agreement will be in writing and delivered in person, by confirmed facsimile transmission, by overnight delivery service, or by registered or certified mail, postage

prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All notices will be sent to the addresses set forth below or to such other address as may be specified by either Party to the other Party in accordance with this Section 12.6:

If to SimX: SimX, Inc., Attn: Legal, 548 Market St #87927, San Francisco, CA 94104-5401

If to Customer: to the address listed in the Customer Order Form.

12.7 **Waiver.** The waiver by either Party of a breach of or a default under this Agreement will not be effective unless in writing. The failure by either Party to enforce any provisions of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent enforcement of that or any other provisions.

12.8 **Severability.** If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

12.9 **Export Laws.** Customer will comply fully with all relevant export laws and regulations of the United States and any other country ("**Export Laws**") where Customer uses any of the SAAS Service, the On-Prem Software, Documentation or any other subject matter made available hereunder. Customer certifies that Customer is not on any of the relevant U.S. government lists of prohibited persons, including the Treasury Department's List of Specially Designated Nationals and the Commerce Department's List of Denied Persons or Entity List. Customer further certifies that Customer will not export, re-export, ship, transfer or otherwise use the SAAS Service, the On-Prem Software Documentation or any other subject matter made available hereunder in any country subject to an embargo or other sanction by the United States, including Iran, Syria, Cuba, Sudan and North Korea and that Customer will not use the SAAS Service, the On-Prem Software, the Documentation or any other subject matter made available hereunder for any purpose prohibited by the Export Laws.

12.10 **Government End User Rights.** Customer agrees that the SAAS Service, On-Prem Software and Documentation and any derivatives thereof are "Commercial Items" as defined in 48 C.F.R. § 2.101, and if Customer is the federal government, then such use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-2, and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.211, 48 C.F.R. §

12.212, 48 C.F.R. § 227.7102-1 through 48 C.F.R. § 227.7102-3, and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, as applicable, the SAAS Service, On-Prem Software and Documentation are licensed to federal government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other users pursuant to this Agreement and any related agreement(s), as applicable. Accordingly, Customer will have no rights in the SAAS Service, On-Prem Software and Documentation except as expressly agreed to in writing by Customer and SimX.

12.11 **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the Parties and is not intended to convey any rights or benefits to any third party, nor will this Agreement be interpreted to convey any rights or benefits to any person except the Parties (and the respective successors or permitted assigns).

12.12 **Relationship of the Parties.** This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the Parties; and the Parties will at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither Party will have any right or authority, express or implied, to assume or create any obligation of

any kind, or to make any representation or warranty, on behalf of the other Party or to bind the other Party in any respect whatsoever.

12.13 **Authority to Bind Customer.** Customer represents and warrants that the Customer Project Manager executing the Customer Order has the full and complete authority, power and discretion to manage Customer's affairs and make determinations of matters under this Agreement. The Customer Project Manager has the full and complete authority to bind Customer to the terms of this Agreement, and all Customer Orders.

12.14 **Entire Agreement.** This Agreement, including each Customer Order, constitutes the complete and exclusive understanding and agreement between the Parties and supersedes any and all prior or contemporaneous agreements, communications and understandings, written or oral, relating to their subject matter. Any modification or amendment of this Agreement will be effective only if in writing and signed by duly authorized representatives of both Parties. Any terms and conditions contained or referenced in a Customer Order, purchase order, quote, acceptance, confirmation, invoice or similar document purporting to modify the terms and conditions contained in this Agreement will be disregarded and have no effect unless otherwise expressly agreed to by the Parties in accordance with the preceding sentence.

EXHIBIT A

SimX Support and Implementation Services

1. **General.** Subject to Customer's payment of the applicable Fees, SimX will provide Support Services described in this Exhibit A to Customer during the Subscription Term (subject to any limitations in the Customer Order, which such limitations may include that certain support services are to be provided by a third party), commencing upon the Customer Order Effective Date for the Customer Order under which Support Services are ordered by Customer.

2. **Definitions.** The following additional defined terms are used in this Exhibit A. Capitalized terms used in this Exhibit A and not otherwise defined have the meanings set forth in the body of the Agreement.

2.1 **"Advanced Support Services"** means First Level Support and Second Level Support services.

2.2 **"Availability Percentage,"** with respect to the SAAS Service, means the amount of time measured in minutes that the SAAS Service could be available during Business Hours divided by the difference between such potential availability less the Downtime.

2.3 **"Business Hours"** means Monday through Friday from 9AM to 5PM Pacific Time, excluding U.S. Federal Holidays.

2.4 **"Downtime"** means the amount of time, measured in minutes during Business Hours, in a given month that the Services are not available other than Non-SimX Downtime. For avoidance of doubt, Errors may exist does not mean that the SAAS Service is not available, unless such Errors cause the SAAS Service to be unable to display and run Scenarios and are not caused by Non-SimX Downtime.

2.5 **"Error"** means a reproducible defect or combination of defects in the SAAS Service or On-Prem Software that result in a failure of the SAAS Service or On-Prem Software, when used in accordance with the Documentation, to function substantially in accordance with the Documentation. Errors are classified as follows:

- (a) Severity 1: The Error renders the SAAS Service or On-Prem Software inoperative or causes a complete failure of the SAAS Service.
- (b) Severity 2: The Error materially affects the performance of the SAAS Service or On-Prem Software, or materially restricts Customer's use of the SAAS Service or On-Prem Software (for example, important SAAS Service or On-Prem Software features are unavailable with no acceptable workaround).
- (c) Severity 3: The Error causes only a minor impact on Customer's use of the SAAS Service or On-Prem Software.
- (d) Severity 4: Although an Error exists, it does not impact the operation of the SAAS Service or On-Prem Software. The Error causes minor inconveniences such as cosmetic problems or Documentation inaccuracies.

2.6 **"Error Correction"** means either: (a) an Update that corrects an Error; or (b) a procedure or routine that, when observed in the regular operation of the SAAS Service or On-Prem Software, eliminates the practical adverse effect of an Error on Customer.

2.7 **"First Level Support"** means responding to and solving basic end user problems relating to the SAAS Service, On-Prem Software or Documentation. First Level Support includes the following:

- (a) responding to questions from end users regarding the SAAS Service, On-Prem Software or Documentation; and

(b) reasonable efforts to diagnosis the root cause of any incident involving the SAAS Service or On-Prem Software, including determining if the incident:

- (i) is the result of a configuration problem or a problem with other software or hardware installed by Customer or any end user;
- (ii) is the result of an end user error;
- (iii) is the result of a problem known to Customer;
- (iv) is reproducible in the applicable environment;
- (v) has been addressed by a prior distributed Update that has not been installed; or
- (vi) is the result of an Error.

2.8 **“Non-SimX Downtime”** means all periods of time during which the SAAS Service is not available due to any reason other than an Error, including periods during which the SAAS Service is not available due to (a) scheduled maintenance or downtime; (b) any Customer Infrastructure, Customer-provided data, Customer Security Measures, or other items for which Customer is responsible under the Agreement, including as set forth in Article 4 of the Agreement; (c) any third party software, hardware, services or other materials; or (d) any force majeure event as described in Section 12.5 of the Agreement.

2.9 **“Second Level Support”** means responding to incidents that are not resolved under First Level Support and, if applicable, resolving Errors that give rise to such incidents.

2.10 **“Customer Technical Contact(s)”** has the meaning set forth in the applicable Customer Order Form.

3. Support Responsibility

3.1 **First Level Support.** If Customer has purchased First Level Support from SimX, SimX is responsible for providing First Level Support to Permitted Users. Otherwise, as between SimX and Customer, Customer is responsible for providing First Level Support to Permitted Users and will instruct Permitted Users to report problems and incidents involving the SAAS Service or the On-Prem Software to the Technical Contact. The Technical Contact will make reasonable attempts to identify and resolve the problem that caused the incident before escalating to Second Level Support.

3.2 **Second Level Support.** SimX is responsible for providing Second Level Support to Permitted Users. Otherwise, if the Technical Contact is unable to identify and resolve the problem, then the Technical Contact may contact SimX for Second Level Support. SimX will provide Second Level Support with respect to Errors in accordance with the requirements set forth in Section 3.1 below. Customer will (and will ensure that Permitted Users) reasonably cooperate with SimX with respect to SimX’s provision of Second Level Support.

3.3 **Error Reporting.** Customer will report to SimX (through any Permitted User if Customer has purchased Advanced Support Services, otherwise through the Technical Contact) all Errors experienced by Customer. Each such Error report will include sufficient information to enable SimX to reproduce and verify the Error. SimX will acknowledge each such reported Error via telephone, facsimile transmission, or electronic mail to the Technical Contact in accordance with the requirements set forth in Section 3.1 below, and will use commercially reasonable efforts, consistent with the severity of the Error as determined by SimX, to reproduce and verify the Errors and provide an Error Correction.

3.4 On-Site Services.

3.4.1 **On-Site Implementation and Training Services.** Customer may, at its election, request on-site implementation services from SimX. If ordered, SimX will schedule a site visit by SimX personnel. While on-site, such personnel will assist Customer in the setup and installation of any Hardware or Software ordered by Customer from SimX, and, at Customer’s discretion, perform one-time training sessions with Customer Personnel on the setup and operation of the Hardware and/or Hardware, as well as an explanation of any other SimX Services ordered by Customer. In addition to

the applicable fees as specified in the Customer Order for On-Site Implementation Services, Customer will reimburse all costs and expenses that SimX reasonably incurs in connection with On-Site Implementation Services.

3.4.2 **Emergency On-Site Support Services.** Customer may, from time to time, request emergency on-site support from SimX, beyond the support described above. SimX will use commercially reasonable efforts to provide such emergency on-site support to Customer, subject to the availability of appropriate SimX personnel. Customer will pay SimX for such on-site support at SimX's then-standard rates, and will additionally reimburse all costs and expenses that SimX reasonably incurs in connection with On-Site Services.

3.4.3 **Responsibilities for On-Site Services.** Customer is responsible for ensuring that SimX personnel will have sufficient access to Customer facilities, personnel, and equipment necessary to perform any services, and that any necessary Hardware not provided by SimX is available as needed to SimX personnel to provide the Services. If SimX is not able to perform due in whole or in part to Customer's provision of insufficient access to such facilities, personnel or equipment, fees and expenses will remain due and payable by Customer. Customer will provide a suitable and safe work environment for SimX employees and subcontractors while such employees and subcontractors may be on Customer's premises. While on Customer premises, SimX's employees and subcontractors will comply with reasonable security practices and procedures generally prescribed by Customer, provided that Customer has given SimX notice of such security practices and procedures. SimX employees and subcontractors will not be required to sign any waivers, releases or other documents to gain access to Customer's premises in connection with the performance of the SimX Services, and any such waivers, releases or other documents will be invalid and will have no effect. SimX may replace or change employees and subcontractors as required.

4. **Updates.** SimX will provide Customer with all Updates as and when SimX makes such Updates generally available to its end user customers receiving maintenance and support services from SimX. Customer acknowledges and agrees that, except as otherwise expressly set forth in this Exhibit A with respect to Error Corrections, SimX is under no obligation to issue Updates and that the obligation to make available any Updates applies only to those Updates that SimX commercially releases to its customers generally. SimX will provide updated Documentation reflecting Updates, as available.

5. **Service Limitations.** Notwithstanding anything to the contrary stated in the Agreement, SimX is not obligated to provide Support Services if the problem or incident at issue resulted from any of the following: (a) modification of or damage to the Software (excluding Updates or other modifications made by SimX); (b) failure of Customer Infrastructure or Customer's failure to provide adequate Customer Infrastructure; (c) negligence of Customer or any Permitted User; (d) a cause or causes beyond the reasonable control of SimX; (e) attempted maintenance by unauthorized persons; (f) Customer's improper use or installation of the Software; (g) use of other than the most recent version of the Software provided by SimX, including any failure to install and use any Error Correction or other Update; or (h) Non-SimX Downtime.

6. **Customer Responsibilities.** Customer will promptly implement all Error Corrections and other Updates furnished by SimX, and will cooperate with and assist SimX in the provision of the Support Services, including providing all Cooperation reasonably requested by SimX. Customer is responsible for providing adequate instructions for use and warnings in connection with any Hardware Products, Headsets, related accessories and software and for ensuring that such items are being used in an appropriate and safe manner, including in accordance with any applicable safety standard or regulation. In addition, SimX will notify Customer promptly if such SimX employees are no longer engaged in providing Support Services (whether as a result of termination of employment, transfer or otherwise) in order to enable Customer to appropriately manage access to its networks and systems.

EXHIBIT B

Custom Scenario Distribution Terms

1. **Distribution Right.** Customer hereby grants to SimX the worldwide, perpetual, irrevocable, non-terminable right and license to copy and distribute (directly or indirectly through multiple tiers) all or any portion of the Custom Scenarios through any means or medium whether now known or later discovered. SimX shall have the right to establish the fees, if any, for Custom Scenarios made available through the SimX Marketplace.

2. **Reporting.** Each calendar quarter by the end of such calendar quarter, SimX will report to Customer the amounts that SimX received in payment for access to the Custom Scenarios provided by SimX to SimX end customers in the prior calendar quarter, together with the Earned Credit for such calendar quarter (“**Earnings Report**”). For purposes of this Exhibit C, “**Earnings**” means an amount equal to 34% of the amounts that SimX received in payment for access to the Custom Scenarios provided by SimX (directly or through its distribution channel) to end customers during the period commencing on the Customer Order Effective Date for the Customer Order pursuant to which Development Services were ordered to develop the Custom Scenario and expiring two years thereafter.

3. **Election; Credit or Payment.** If Customer’s election is not specified in a Customer Order, Customer will notify SimX in writing of its election either to obtain an Earned Credit (in the amounts set forth below), or obtain the cash value of the Earnings, as follows:

(a) Earned Credit Election: if Customer’s election to obtain an Earned Credit is received within 60 calendar days of the date of the Earnings Report to obtain an Earned Credit (as defined below), Customer may elect to obtain a credit in an amount equal to the sum of the Earnings, plus 50% of the Earnings, and if Customer’s election to obtain an Earned Credit is received 61 or more calendar days after the date of the Earnings Report but prior to the third anniversary of the date of the Earnings Report, Customer may elect to obtain a credit in an amount equal to the Earnings (each an “**Earned Credit**”). Earned Credits will be applied only to fees payable for the SAAS Service, On-Prem Software or SimX Professional Services that have already accrued as of the date of the applicable Earnings Report or within three calendar years after the date of the applicable Earnings Report. SimX will, within five (5) calendar days of receipt of Customer’s election to obtain an Earned Credit, apply the Earned Credit first to any outstanding Customer invoices and then to any invoices submitted within three calendar years after the date of the applicable Earnings Report.

(b) Cash Value: Customer may elect, by written notice provided to SimX within 60 calendar days of the date of an Earnings Report, to receive in lieu of the Earned Credit, a payment in an amount equal to the cash value of the Earnings, which will be paid to Customer within 60 days of SimX’s receipt of Customer’s election notice.

If no such notice of election is received within the foregoing time periods following the date of the Earnings Report, then no Earned Credit or monetary payment will be due or owing to Customer with respect to exercise of the rights and licenses granted hereunder by Customer with respect to all or any portion of the Custom Scenarios.

Notwithstanding anything to the contrary stated herein, if the Earnings in any calendar quarter are less than \$100, then the foregoing right to elect an Earned Credit or cash value equivalent will not apply to such calendar quarter and SimX shall have no obligation under Section 2 or Section 3 of this Exhibit C with respect to such calendar quarter.

EXHIBIT C

Marketplace Scenarios License Agreement

1. DEFINITIONS.

Capitalized terms used and not otherwise defined in this Marketplace Scenarios License Agreement (this “**Agreement**”) shall have the meanings set forth in the Software License and Service Terms between Customer and SimX (“**SLSA**”).

1.1 “Case Content” means text, images, audio, video, audio-video, data and other information in any form or media integrated into a Licensed Scenario.

1.2 “Licensed Scenario” means an exercise module for educational and training purposes specified in a Customer order placed through the SimX Marketplace, including the Software and Case Content made available to Customer as part of such module and any Documentation and Updates provided by SimX to Customer in connection with such module.

1.3 “Permitted User” shall have the meaning set forth in the SLSA, or if not defined in the SLSA, then (a) any student, trainee, employee or independent contractor of Customer or (b) non-employee physicians or other medical professionals or trainees, in each case that are authorized by Customer to access the SAAS Service or the On-Prem Software.

1.4 “SimX Marketplace” means the online site, direct sales representative(s), distributor sales, and other channels through which Licensed Scenarios can be ordered.

2. SLSA; RIGHTS AND LICENSES.

2.1 Limited License Grant and Scope. Subject to the terms and conditions of the SLSA and this Agreement, Customer’s rights and licenses under the SLSA extend to the Licensed Scenarios to the same extent that they extend to Scenarios licensed under the SLSA. Customer and SimX acknowledge and agree that Licensed Scenarios obtained through the SimX Marketplace are hereby included within the definition of “Scenarios” under the SLSA. Except as may be otherwise expressly set forth in this Agreement, all restrictions and limitations on Customer’s rights and licenses and all disclaimers of warranties and limitations of liability set forth in the SLSA apply to Licensed Scenario in the same manner that they apply to other products or services made available under the SLSA.

2.2 No Support. Notwithstanding anything to the contrary stated in the SLSA, SimX has no obligation to provide support, maintenance, Updates or other new versions of Licensed Scenarios under this Agreement or the SLSA. If Updates or new versions of Licensed Scenario are made available to Customer, however, they are included under this Agreement and the SLSA as “Licensed Scenarios” and “Scenarios” and are subject to the terms and conditions of this Agreement and the SLSA.

3. Case Content; Decision-making. Customer acknowledges that, as between SimX and Customer, all Case Content including educational material, medical case study distinctions, and diagnostic decision-making assessment criteria are Customer’s responsibility. Customer acknowledges that SimX is not responsible for determining the type of, or criteria needed, for a medical case and diagnostic decision-making assessment, nor is SimX responsible for deficiencies in or performance of the steps, procedures or other aspects of the Licensed Scenarios. SimX does not act upon any Case Content or data generated by or for Customer in any professional capacity (including clinical decision-making) or determine the type of procedures appropriate for Customer to make such assessment. Customer must determine such assessments. Nothing in the Licensed Scenarios, Documentation or other information or results made available under or in connection with this Agreement are intended to substitute for Customer’s or health care providers’ independent clinical and business judgment. Without limiting the foregoing, as between SimX and Customer, Customer remains solely responsible for ensuring the quality, sufficiency and legality of the clinical and business judgments, medical case management and diagnostic assessments, and other decisions made using the Licensed Scenarios, Documentation or other information or results made

available under or in connection with this Agreement. Any risk arising out of or relating to the Licensed Scenario that may result in improper medical treatment, injury, property damage, or other damages is entirely allocated to Customer.

4. Termination. This Agreement is effective until the earlier of: (i) expiration or termination of the SLSA, or (ii) termination of this Agreement by SimX. SimX may terminate this Agreement at any time by written notice if Customer breaches any of the provisions of this Agreement or the SLSA. Upon termination of this Agreement, Customer agrees to cease all use of the Licensed Scenarios, return to SimX or destroy the Licensed Scenarios and all Documentation and related information and materials in Customer's possession, and so certify to SimX. Except for the license granted herein and as expressly provided herein, the other terms of this Agreement will survive expiration or termination.

5. Disclaimer of Warranties. THE LICENSED SCENARIOS, DOCUMENTATION, AND ANY OTHER PRODUCTS, COMPONENTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, EXPRESS OR IMPLIED. TO THE FULL EXTENT PERMITTED BY LAW, SIMX DISCLAIMS ALL WARRANTIES AND CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR TRADE USAGE. WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING, SIMX DOES NOT WARRANT OR PROVIDE ANY CONDITION THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED.

6. Limitation of Liability. TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, (A) SIMX WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ARISING FROM LOSS OF USE, LOSS OF DATA, LOST PROFITS, BUSINESS INTERRUPTION, OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES, OR RELATING TO PROCURING OR USING ANY HARDWARE OR DEVICES IN CONNECTION WITH THE SUBJECT MATTER HEREOF) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, AND REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING ORDINARY NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF WHETHER SIMX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; (B) SIMX'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR SUCH LICENSED SCENARIO, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, AND REGARDLESS OF WHETHER LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING ORDINARY NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH LIABILITY WAS FORESEEABLE, AND REGARDLESS OF WHETHER SUCH LIABILITY AROSE FROM CONTRACT, WARRANTY, TORT (INCLUDING ORDINARY NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF WHETHER SIMX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

7. Indemnification.

7.1 Indemnification by Customer. Upon SimX's written request, Customer will defend and/or settle any and all Claims (including Claims alleging ordinary negligence resulting in personal or bodily injury, damage to tangible property or other product liability) brought against SimX by a third party arising out of or relating to: (a) access or use of the Licensed Scenarios and any other products, components or services provided hereunder; (b) access or use of hardware, devices or any other products or services accessed or used in connection with any of the foregoing; (c) Claims, disputes or controversies between Customer, Permitted Users, and third parties (e.g., with respect to sufficiency or performance of training or adequacy of warnings); and (d) the Excluded Matters. Customer will pay all damages finally awarded by a court of competent jurisdiction or settlement amounts entered into as a result of such Claims. Without limiting the foregoing, as between the Parties, Customer acknowledges and agrees that Customer is solely responsible and liable for any loss, damage, injury, damage to tangible property or other liability arising out of or relating to the use of the products or services made available hereunder or any other products or services used in connection therewith, including any SimX-provided hardware or other devices.

7.2 Indemnification Process. SimX will: (a) provide prompt written notice to Customer of any Claim for which indemnification is required; (b) subject to Section 7.1 above, give Customer sole control of the defense and/or

settlement of the Claim (provided that no settlement may be entered into by Customer without SimX's prior written consent); and (c) provide Customer full cooperation and assistance with respect to the defense and settlement at Customer's cost and expense.

8. Miscellaneous Terms.

8.1 Interpretation. For purposes of interpreting this Agreement, (a) unless the context otherwise requires, the singular includes the plural, and the plural includes the singular; (b) unless otherwise specifically stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section or paragraph; (c) the words "include" and "including" will not be construed as terms of limitation, and will therefore mean "including but not limited to" and "including without limitation"; (d) unless otherwise specifically stated, the words "writing" or "written" mean preserved or presented in retrievable or reproducible form, whether electronic (including email but excluding voice mail) or hard copy; (e) the captions and section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement; and (f) the references herein to the Parties will refer to their permitted successors and assigns.

8.2 Dispute Resolution. If there is any controversy, claim or dispute arising out of or relating to this Agreement or the breach thereof, whether based on contract, tort, statute or other legal or equitable theory (the "Dispute"), the Parties will first attempt to resolve such Dispute through good faith negotiations between executive-level representatives of each Party who have full authority to resolve the Dispute. If the Dispute remains unresolved ten (10) business days after such negotiations have commenced, then the Dispute will be settled by binding arbitration administered by JAMS in accordance with its applicable rules then in effect. The Agreement and its interpretation and validity will be governed by the substantive law of the State of California applicable to contracts made and to be performed within the State and without regard to the State's conflicts of laws rules that would result in the application of the laws of another jurisdiction, and without giving effect to the conflicts of law principles of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The location of the arbitration will be Mountain View, California. The arbitration will be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16. The award of the arbitrator will be final and binding, and judgment on the award may be entered, confirmed and enforced in any court having jurisdiction thereof. Nothing in this Section 12.2 will preclude any Party from seeking interim or provisional relief concerning the Dispute, including a temporary restraining order, a preliminary injunction or an order of attachment, either prior to or during negotiation or Arbitration, in order to protect the interests of such Party.