

**THIS AGREEMENT** is made on, [XXXXXXXX] 2022

**BETWEEN:**

- (1) **NAME and ADDRESS OF Client** ("the Client");  
and
  - (2) **VENTURE SIMULATIONS Ltd**, a company incorporated in England and Wales with registered office at Selby Road, York, YO19 6FQ ("**VSL**").
- each referred to as a "**Party**" and together the "**Parties**".

**WHEREAS:**

1. VSL is the entire legal and beneficial owner of certain software products and services listed in Schedule1, and is willing to licence these products to the Client.
2. The Client has selected VSL to supply the Services and VSL undertakes to supply the same on the terms set out below.

**NOW IT IS HEREBY AGREED** as follows:

**1. DEFINITION AND INTERPRETATION**

**"Content"** means any content, products, materials, services, discussion forums, or information contained on or available through the Site;

**"Intellectual Property rights"** means any patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world

**"Maintenance Release"**: means a release of the Services which corrects faults, adds functionality or otherwise amends or upgrades the Services, but which does not constitute a New Version.

**"Modification"**: means any Maintenance Release or New Version

**"New Version"**: means any new version of the Services which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

**"Services"** means the services and software provided by VSL hereunder, including any agreed upon implementation services and support services;

“**Site**” means VSL’s business simulation learning solutions services (SimVenture Classic, SimVenture Evolution & SimVenture Validate and related training) as well as the information on its websites [www.simventure.com](http://www.simventure.com), [www.simventure.com/Classic](http://www.simventure.com/Classic), [www.simventure.com/Evolution](http://www.simventure.com/Evolution) and [www.simventure.com/Validate](http://www.simventure.com/Validate).

“**Significant**” in the context of defects, diminution of functionality or performance, means that the user(s) of the software is effectively prevented from using the software as it was specified at the point of purchase.

## 2. LICENSE AND ACCOUNT TERMS

### 2.1 (SimVenture Classic) SimVenture Classic Licenses are defined as follows:

- 2.1.1 **Personal and Student licenses** must be installed on personal computers owned by an individual. Personal and Student licenses must not be installed on computers belonging to an organisation or institution and cannot be purchased or used within a teaching or commercial environment without the advance written permission of VSL.
- 2.1.2 **School licenses** can be installed on School, Academy or Sixth Form College computers. School licenses must not be installed on College, University or computers belonging to a public or commercial organisation or institution without the express written permission of VSL.
- 2.1.3 **College licenses** can be installed on School, Academy, Sixth Form College or Further Education College (or equivalent) computers. College licenses must not be installed on University or computers belonging to a public or commercial organisation or institution without the express written permission of VSL.
- 2.1.4 **Higher Education licenses** can be installed on School, Academy, Sixth Form College, Further Education College (or equivalent) or computers used within a Higher Education environment. Higher Education licenses must not be installed on computers belonging to a public or commercial organisation or institution without the express written permission of VSL.
- 2.1.5 **Public Sector/NGO licenses** can be installed on School, Academy, Sixth Form College, Further Education College (or equivalent), Higher Education and computers used within a Public Sector/NGO environment. Public Sector/NGO licenses must not be installed on computers belonging to a commercial organisation or institution without the express written permission of VSL.
- 2.1.6 **Commercial licenses** can be installed on any computer belonging to an individual or organisation and used for any purpose.

Classic Licenses purchased by an institution are solely for use by people working at or studying for a formal qualification within that institution at that single location. Licenses cannot be used for external events and/or with external third party individuals or groups without clear and advance written permission from VSL.

### 2.2 (SimVenture Evolution) SimVenture Evolution Accounts are defined as follows:

- 2.1.1 **Education Accounts** are accounts that are used within a formal and registered educational environment where users of the Services are working towards a recognised qualification.
- 2.1.2 **Corporate Accounts** are accounts for use within any commercial environment.

SimVenture Evolution Licenses purchased by an institution are solely for use by people working at or studying for a qualification provided directly by that institution. Licenses can in certain circumstances be used for external events or with external third parties but clear written permission from VSL is required in advance.

### **2.3 DELIVERY, ACCEPTANCE AND INSTALLATION**

- 2.3.1** VSL shall ensure that the Services are available to the Client upon a date agreed between the Parties (“Delivery Date”), and time shall be of the essence regarding the Delivery Date.
- 2.3.2** For a period of 30 days commencing the installation or use of the Services, the Client may discontinue this licence of Services if there is an agreed and clear material breach and the software supplied does not perform to the Client’s satisfaction. If the Client does so, VSL shall immediately refund up to 100% of all monies paid by the Client under this licence and, on receipt of that refund, this licence shall terminate.
- 2.3.3** The Client may reject any modification delivered by VSL, by written notice, within one month of delivery, if tests carried out by the University establish on reasonable grounds that its use would result in any significant diminution of the performance or functionality of the Services.
- 2.3.4** Upon such rejection:
  - 2.3.4.1** VSL shall either correct the modification and re-issue it or withdraw it; in the case of a Maintenance Release, the Client may within a reasonable time require VSL to supply, free of charge, such additional services as are required to rectify any defect in the Services which the Maintenance Release was intended to rectify.

### **2.4 LICENCE AND DURATION**

- 2.4.1** Upon payment of the fees listed in Schedule 1, VSL shall grant to the Client a non-exclusive licence to the Services for the period stated in Schedule 1.
- 2.4.2** VSL will provide the Client with all Maintenance Releases generally made available to its customers. VSL warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Services in any significant manner.

## **3. PRICE AND PAYMENT**

- 3.1** The price for Services and related services will be as quoted in sterling by VSL for the Services.
- 3.2** The price may increase where the services or the quote are altered in accordance with the Client’s instructions. VSL shall notify the Client of any price increase that results from any alteration before such alteration shall come into effect.
- 3.3** All prices quoted by VSL shall be exclusive of VAT where applicable, and all prices quoted shall be valid for 30 days from the date of the agreed quote.
- 3.4** Unless otherwise agreed within Schedule 1, all fees shall be payable within 30 days of a valid invoice.
- 3.5** Unless otherwise agreed in Schedule, all payments must be made in Sterling currency.
- 3.6** Notwithstanding the above any Services provided to first time customers must be paid for in full on receipt. VSL reserves the right to request references in respect of the Client where any credit is to be given. Where payment is not made in accordance with this Agreement VSL reserves the right to charge interest at 5% (or 4% above the

Bank of England base rate where the base rate is greater than 1%) on any late payment, until such time as the payment is made in full. In addition to the interest charge and to cover all administration of any late payment, VSL will charge £15 for every monthly statement generated as a result of payment being late.

### **3.7 Cancellations and Postponements:**

- 3.7.1** In the event of cancellation or postponement of a project once commissioned, a fee will be charged by VSL to cover costs of all work undertaken, services provided, expenses and overheads, and commitments made up to the time of cancellation. If VSL has occurred costs from third parties to supply the work e.g. sub-contracting, then this element of the agreed quotation must be paid in full.
- 3.7.2** In the event of the Client cancelling a training course or a place on a training course run by VSL, payment will be required in full from the Client if the cancellation is made within 7 working days or less of the course taking place.
- 3.7.3** In the event of VSL having to cancel or postpone a training course run for the Client, the Client will be allowed to claim for any proven out of pocket expenses that may have been incurred at the time of cancellation. VSL will not be liable to pay the Client for any consequential costs arising from the cancellation of a course.

## **4. CONFIDENTIALITY AND PUBLICITY**

- 4.1** Each party undertakes that it shall not at any time during or the Contract or after the Contract is completed, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 4.2.
- 4.2** Each party may disclose the other party's confidential information:
  - 4.2.1** to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 4; and
  - 4.2.2** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 4.3** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 4.4** VSL warrants that it will only use the Client's logo for publicity purposes on its own website but the client can request at any time for the logo to be removed.

## **5. VSL WARRANTIES**

- 5.1** VSL acknowledges that the Client has entered into this licence in reliance upon VSL's expertise in selecting and supplying Services fit to meet the Client's business requirements.
- 5.2** VSL warrants that:
  - 5.2.1** it has the right to enter into this licence and to grant to the Client a licence or sub-licence to use the Services as contemplated by this licence;
  - 5.2.2** the Services will conform in all material respects to any Specification and be free from significant defects for a period of 12 months from delivery of the Services (Warranty Period);

**5.2.3** the Services and the media on which the Services is delivered are free from vulnerabilities, viruses and other malicious code;

**5.2.4** the media on which the Services are delivered under this licence will be free from defects;

**5.3** If, within the Warranty Period or as soon as reasonably practicable thereafter, the Client notifies VSL of any defect or fault in the Services in consequence of which it fails to conform to any of the warranties in Clause 5.2, VSL shall, at VSL's option, promptly repair or replace the Services.

**5.4** The warranties in Clause 5.2 shall apply to any Modification that is acquired by the Client during the course of this licence as though the references to the date of this licence were references to the date on which such Modification was acquired.

**5.5** Other than stated in this Clause 5, VSL hereby disclaims any representations and warranties of any kind, either express or implied, including without limitation warranties of merchantability, fitness for a particular purpose or as to operation or content. VSL uses reasonable efforts to include accurate and up-to-date information on this Site; it does not, however, make any warranties or representations as to its accuracy or completeness. VSL periodically adds, changes, improves, or updates the information and documents on this Site (including but not limited to products, pricings, programs, events, and offers) without notice. VSL assumes no liability or responsibility for any errors or omissions in the content of this Site.

## **6. LIMITATION OF LIABILITY**

**6.1** Subject to 6.5, neither party shall in any circumstances have any liability for any losses or damages which may be suffered by the other, whether the same are suffered directly or indirectly or are immediate or consequential, which fall within any of the following categories:

**6.1.1** special damage even though that party was aware of the circumstances in which such special damage could arise;

**6.1.2** loss of profits;

**6.1.3** loss of anticipated savings;

**6.1.4** loss of business opportunity and management time;

**6.1.5** loss of goodwill,

provided that this clause 6.1 shall not prevent claims for direct financial loss that are not excluded by any categories in Clause 6.1.

**6.2** It is agreed that for the purpose of 6.1 claims for direct financial loss that are not so excluded include Client claims for:

**6.2.1** the costs and expenses in connection with the migration from the Services to substitute software;

**6.2.2** the cost of relevant external consultancy, internal or external computer time, acceptance testing and internal personnel support together with all profit and related costs incurred to remedy the defects in the Services;

**6.2.3** the cost of purchasing services to correct defects in the Services;

**6.2.4** expenditure (including promotional expenditure) rendered necessary as a result of defects in the Services;

**6.2.5** costs and expenses up to a maximum of £5,000 (including legal costs and disbursements on a solicitor and client basis) of the Client incurred as a result of dealing with, and any fine imposed by, any regulatory authority in connection with any breach by the Client of its regulatory requirements resulting from any breach by VSL of its obligations under this licence.

**6.3** Subject to Clause 6.4, the total liability of the Client and VSL, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to 100% of the fees paid under this Agreement.

**6.4** The exclusions in Clause 6.1 shall apply to the fullest extent permissible at law but neither party excludes any liability for death or personal injury caused by its negligence, or the negligence of its employees or agents, or for fraud or fraudulent misrepresentation or the deliberate default or wilful misconduct of that party, its employees or agents or subcontractors.

## **7. INTELLECTUAL PROPERTY INDEMNITY**

**7.1** All Intellectual Property Rights in the Services and any Modification belong, and shall belong, to VSL.

**7.2** VSL undertakes to defend the Client from and against any claim or action that the possession, use, development, modification or maintenance of the Services (or any part thereof) infringes the Intellectual Property Rights of a third party ("Claim") and shall fully indemnify and hold harmless the Client from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Client as a result of, or in connection with, any such Claim.

**7.3** If any third party makes a Claim, or notifies an intention to make a Claim against the Client, the Client shall:

**7.3.1** as soon as reasonably practicable, give written notice of the Claim to VSL, specifying the nature of the Claim in reasonable detail;

**7.3.2** not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of VSL (such consent not to be unreasonably conditioned, withheld or delayed);

**7.3.3** give VSL and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Client, so as to enable VSL and its professional advisers to examine them and to take copies (at VSL's expense) for the purpose of assessing the Claim; and

**7.3.4** subject to VSL providing security to the Client to the Client's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as VSL may reasonably request to avoid, dispute, compromise or defend the Claim.

**7.4** Without prejudice to Clause 10.2, if any Claim is made, or in VSL's reasonable opinion is likely to be made, against the Client, VSL may, at its sole option and expense:

- 7.4.1** procure for the Client the right to continue using, developing, modifying or maintaining the Services (or any part thereof) in accordance with the terms of this licence;
- 7.4.2** modify the Services so that it ceases to be infringing;
- 7.4.3** replace the Services with non-infringing services;
- 7.4.4** or repay to the Client an agreed proportion of sums which the Client has paid to VSL under this licence,

provided that if VSL modifies or replaces the Services, the modified or replacement Services must comply with the warranties contained in Clause 5.2 and the Client shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

## **8. CLIENT INDEMNITY**

**8.1** The Client agrees to defend, indemnify, and hold harmless VSL, its affiliates, subsidiaries, and divisions, and each of their officers, directors, employees and agents, from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, alleging or resulting from your use of the Content (including software) or your breach of the terms of this Agreement. VSL shall provide notice to you promptly of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit or proceeding.

## **9. TERMINATION**

**9.1** In relation to termination, this licence may be terminated only:

- 9.1.1** by the Client at any time within the first month of software use as long as written notice to VSL is provided stating clearly the problem or fault with the product or associated service.
- 9.1.2** by VSL immediately by written notice to the Client if the Client is in material or persistent breach of any of the conditions Clause 3.7 or Clause 4, and either that breach is incapable of remedy or the Client shall have failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach;

termination of this licence by either party in accordance with the rights contained in Clause 11.1(a) shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

**9.2** On termination or expiry of this agreement, the following clauses shall continue in force: Clause 1, Clause 4, and Clause 7.

**9.3** Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

**10. VARIATION.** No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**11. SEVERANCE.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted under this clause, the parties shall negotiate in good

faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 12. THIRD PARTY RIGHTS.** A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 13. RIGHTS AND REMEDIES.** Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14. WAIVER.** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15. NO PARTNERSHIP OR AGENCY.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 16. NOTICES.** Any notice or other communication given to a Party under in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post to that Party's principal place of business. A notice shall be deemed to have been delivered (a) if by hand, at the time the notice is left at the proper address and (b) if by mail, at 9.00am the second business day after posting.
- 17. FORCE MAJEURE.** If either Party is delayed or prevented in the performance of any of its obligations under the Contract by an event, circumstance or cause beyond its reasonable control which by its nature could not have been foreseen or, if foreseeable, was unavoidable (save any that merely increases the cost of performing such obligations and excluding any strikes, lock-outs or other industrial disputes involving its own workforce or that of any of its agents or sub-contractors), that party shall not be liable for such delay or non-performance and the time for performance of the affected obligation shall be extended by such period as is reasonable to enable that party, using all reasonable endeavours, to perform that obligation.





This Software Licence Agreement starts on **INSERT DATE** and is valid for a maximum of 12 Months. No Auto-Renewals will apply.

Signed	Venture Simulations Ltd	CLIENT
Name	[Enter name]	[Enter name]
Title	[Enter title]	[Enter title]
Signature		
Date	[Enter date]	[Enter date]

**Schedule 1**

Provide details of written quote below: