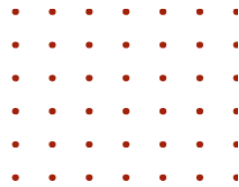




Simitive

TERMS AND CONDITIONS

G-CLOUD 15



Agreement

Agreement Number:	XXXX9999
Customer Name and Address:	XXXXXXXXXX XXXXXXXXXX
Customer Representative Name:	XXXXXXXXXX
and Contact Details:	(e) XXXX.ac.uk (t) 9999999999
Effective Start Date:	12 August 2025
Initial Term:	means from the Effective Start Date to 11 August 2026

THIS AGREEMENT HAS BEEN SIGNED, ACKNOWLEDGED AND AGREED TO BY:

..... For and in behalf of Simitive Limited	Print Name Date
..... For and in behalf of Customer	Print Name Date

Section A. Scope of Services

A.1 Simitive Software

Product	Number of Authorised Users

A.2 Implementation Services

Service Type	Number of Days

A.3 Support

Support Service	Support Definition

Section B. Fees

B.1 Simitive Software

Product	Fee/User	Fee Frequency	No of Authorised Users	Total Fee (£)
Total				

B.2 Implementation Services

Service Type	No of Days	Day Rate	Total Fee (£)
Total			

B.3 Support

Support Service	Cover Definition	Annual Fee (£)
Total		

1. Definitions and Interpretation

1.1 The following definitions shall have the following meanings:-

Applicable Taxes	means value added tax chargeable under English law for the time being and any similar additional or applicable tax in any relevant jurisdiction.
Authorised Users	means the maximum number of users (any person, individual or entity whose details are created, imported or otherwise entered into the Simitive Software) licensed by Simitive to access, use or otherwise have their details held within the Simitive software as defined in Section A of this agreement.
Business Hours	means Monday to Friday 09:00 to 17:00 GMT excluding UK bank holidays. Also 'Business Day'.
Cancellation Fees	means the fees payable on termination of this Agreement in accordance with clause 7.3 below.
Contracted Hours	means the relevant hours during which Simitive has contracted to provide the Services, as set out in Section A of this Agreement.
Customer Content	means any information, trademarks, logos, files, images other content that may be uploaded, attached, provided or otherwise put into the Simitive Software by or on behalf of Customer or its Authorised Users.
Customer	means the organisation named on page one of this agreement: also referred to as 'you'
Customer Equipment	means any equipment, systems, cabling, communications or facilities provided by you and used directly or indirectly in the supply of the Services or in respect of or in connection with which the Services.
Customer Material	means all documents, information and materials provided by you relating to the Services, including but not limited to computer programs, data, reports and specifications.
Data Protection Legislation	means any applicable laws relating to the protection of personal data and the privacy of individuals (all as amended, updated or re-enacted from time to time) including but not limited to the UK Data Protection Act 2018, the General Data Protection Regulation (UK GDPR), the EU General Data Protection Regulation (EU) 2016/679, or any other relevant legislation covering the use of personal data applicable to each party in the jurisdiction in which it is based.
Intellectual Property Rights	means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Hours of Service	means the hours during which the Simitive Software is available for use by Customer's Authorised Users. Which for the purposes of this agreement shall be twenty four (24) hours per day for seven (7) days per week, except for scheduled system back-up or other on-going maintenance as required and scheduled by Simitive.
Losses	means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and loss of opportunity to deploy resources elsewhere), damages, claims, demands, proceedings and judgments.
Term	means the period during which the Services and access to the Simitive Software will be provided by Simitive to Customer, including the Initial Term and any Renewal Terms (as each is defined in Clause 7.1 of this agreement).
Scope of Services	means the services as defined in Section A of this agreement.
Services	means the services to be provided by Simitive under this Agreement, together with any other services as may be agreed between Simitive and you from time to time in accordance with Clause 5 of this Agreement.
Service Credits	means the credit that Customer may claim from Simitive should the availability of the Simitive Software fail to meet the service levels as defined in clause 4.2. Such credit to be calculated as the Fee paid for the use of the Simitive Software (as defined in Section B1 of this Agreement), divided by the number of hours in a twelve (12) month period (8,736), multiplied by the number of whole hours for which the Simitive Software was unavailable for use by the Customer's Authorised Users.
Service Failure	means the failure of Simitive to provide the Services in accordance with the service levels set out in Clause 4 of this Agreement.

Simitive Software	means the Simitive Products as defined in Section A of this agreement and delivered via the internet on a Software as a Service (SaaS) basis. As defined in the Simitive software documentation (including User Guides and other technical documentation) provided by Simitive from time to time.
Support	Means the Support Services as defined in Section A.3 of this Agreement. Standard (Licence) Support included in the Licence Fee is for the reporting of software bugs or issues, and provides access to the Simitive Client Portal, which provides Release notes and Simitive FAQs for the licenced Simitive Software. Any additional Support Services are as documented in Section A.3 Support.
Support Hours	means the hours during which support is provided to Customer as defined in Section A.3 Support of this Agreement.

1.2 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.3 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

2. Duration

2.1 This Agreement shall take effect on and from the Effective Start date on page 1 of this agreement and shall continue thereafter until terminated in accordance with its terms.

3. Services

3.1 Subject to the other terms of this Agreement, Simitive will provide the services as set out in the Scope of Services in Section A of this Agreement for the Term.

3.2 Any additional services (specifically anything not expressly stated in the Scope of Services in Section A of this Agreement as being included as part of the Services) shall be subject to separate agreement in writing between Customer and Simitive.

3.3 Simitive grants to Customer, and Customer accepts, a non-transferable, nonexclusive right to access and use the Simitive Software via the Internet and use the Software only as authorised in this agreement, for its own purpose and operations, during the Term. Customer acknowledges that its access and use of the Simitive Software will be via the internet only. The Simitive Software will not be provided to Customer in any form of media and will not be installed on any servers or other computer equipment owned or otherwise controlled by Customer. The Simitive Software will be hosted by Simitive and accessed and used by Customer through the use of the Internet and Customer's computers.

3.4 The maximum number of Authorised Users, whether Customer's employees, contractors, volunteers, or other agents that are permitted to access, use or be registered within the Simitive Software at any given time shall not exceed the "Number of Authorised Users" as specified in Section A of this agreement.

3.5 Where Simitive or any of its personnel are asked by the Customer (or anyone on behalf of the Customer) to carry out services which, acting reasonably, Simitive determines are not within the scope of the Services, Simitive shall notify the Customer of such determination and the provisions of clause 5 of this Agreement shall apply.

4. Service Levels

4.1 Simitive will make the Simitive Software available for use by Customer's Authorised Users during the Term. Simitive will provide Customer with secure access to the Simitive Software via the Internet for the Hours of Service.

4.2 Simitive will use commercially reasonable endeavours to make the Simitive Software available for 99.5% of the Hours of Service during the Term.

4.3 Should the Simitive Software be available for less than 99.9% of the Hours of Service Customer shall be entitled to claim Service Credits from Simitive.

4.4 For purposes of this Agreement, "availability" exists unless the Simitive Software is not accessible to Customer's Authorised Users due to (i) a hardware failure of the server(s) at the Hosting Site, or (ii) a connection failure between the server hosting the Software and the closest Internet router, in each case excluding Maintenance Windows. Software bugs, errors or other problems are not relevant to availability and are expressly excluded.

4.5 Simitive and/or its hosting or telecommunications partner(s) may perform planned system maintenance between 8 p.m. and 7 a.m. GMT or at any time on Saturdays and Sundays. Customer understands and agrees that there may be instances where Simitive needs to interrupt access to the Simitive Software without notice in order to protect the integrity of the Simitive Software or Services due to security issues, virus attacks, spam issues or other unforeseen circumstances.

4.6 Should Customer believe that Simitive has failed to meet the availability set forth in Clause 4.2, Customer must notify Simitive in writing of both the date and the amount of time the Software was unavailable within five (5) business days of the end of the month in which unavailability occurred. Simitive will confirm the information provided in such notice. If Simitive cannot confirm the time that the Simitive Software was unavailable, then Customer and Simitive agree to refer the matter to executives at each organisation for resolution. Should Simitive agree that the availability service level was breached, Customer will receive the Service Credits for the affected period. Service Credits shall be the sole and

exclusive remedy to Customer for any unavailability. Except as expressly set forth herein, any remedy Customer may receive pursuant to this section does not relieve Customer, or allow a set-off, of any other payment obligations to Simitive under this Agreement.

- 4.7 Simitive will not systematically monitor Customer Content, but Simitive reserves the right to (a) disable access to or delete any Customer Content which it determines in its sole discretion (such discretion to be exercised in good faith) to be illegal, obscene, threatening, defamatory, fraudulent, infringing, harassing, or otherwise offensive, and (b) disable access to or delete any other Customer Content under justified exigent circumstances, as such circumstances are determined in good faith by Simitive.
- 4.8 Simitive will provide online, telephone and e-mail support to Customer during the Term as defined in Section A3 of this Agreement.
- 4.9 The Customer acknowledges and accepts that, due to the nature of technology and software and the general subject matter in respect of which the Services are being provided, Simitive cannot guarantee to resolve any issue that may arise. However, subject to the other terms of this Agreement, where any issue arises in respect of which the Services are being or are to be provided and which either Simitive becomes aware of or which is notified to Simitive by the Customer in writing, Simitive will use reasonable endeavours to respond and resolve the issue as swiftly as is reasonably practicable and in accordance with the following service levels:

Severity	Description	Scheduled Hours	Target Response Time
1	Critical Software problem or issue. Production environment is inoperative and Customer's business is being impacted. No workaround exists and use of functionality is materially compromised.	Support Hours	60 minutes from when Simitive receives notification of the Problem.
2	Time Critical problem or issue. Production environment is adversely affected. Productivity for the Customer is compromised; work can be done by the Customer but not at full capacity.	Support Hours	By 10.00 am (GMT) the next Business Day from when Simitive receives notification of the Problem.
3	Non-time critical problem or issue. Production environment has encountered a non-critical problem or Defect and / or questions have arisen on the use of the Software.	Support Hours	Acknowledgment within 24 Business hours from when Simitive receives notification of the Problem. A process will be agreed with the Customer to remedy any Level 3 Problem at the appropriate time.
4	Non-time critical problem or issue. Low priority request with no impact, low priority bugs. All other such as enhancements, feature request will go through a process that will be agreed with the Customer at the appropriate time.	Support Hours	Acknowledgment within 24 Business Hours from when Simitive receives notification of the Problem. A process will be agreed with the Customer to remedy any Level 4 Problem at the appropriate time.

- 4.10 The relevant time for responding to an issue as categorised above shall be measured from the time the issue is either notified to Simitive in writing by the Customer with sufficient detail to enable Simitive to categorise the issue in accordance with the foregoing or when Simitive was otherwise aware of the same. To the extent that the Customer notifies Simitive of any issue in accordance with the foregoing outside of Support Hours, such notification shall be deemed to have been received at the beginning of the first Support Hour subsequent to such notification. To the extent that the response time would exceed the contracted Support Hours then the measure of the response time shall stop at the end of the contracted Support Hours and recommence at the start of the next period of contracted Support Hours.
- 4.11 Without prejudice to any other provisions of this Agreement, Simitive shall not have any liability in respect of any Service Failure where it is due to any one or more of the following:
- (a) any matter beyond the reasonable control of Simitive and/or where Simitive is entitled to relief pursuant to Clause 14 of this Agreement;
 - (b) failure of all or any part of the Customer Systems (other than as caused by a breach of this Agreement by Simitive or those within its direct control); or
 - (c) where Simitive has suspended the Services in accordance with the terms of this Agreement.

5. **Change in Services**

- 5.1 If you want Simitive to provide additional Services please notify Simitive in writing stating specifically which additional Services you require. Simitive will consider this request and will inform you whether it is possible and/or practical to

provide such additional Services. In the event that Simitive does agree to provide you with Additional Services it shall provide you with a written estimate of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to its charges arising from the change (such variations not to be implemented unless agreed in writing by you and Simitive);
- (c) the likely effect of the change on the existing Services; and
- (d) any other impact of the change on this Agreement.

5.2 Any changes that are agreed will be documented by way of an amendment to the Scope of Services of this Agreement. If changes (whether additions or reductions) are not agreed, this Agreement shall continue in full force and effect in accordance with its terms unless otherwise terminated in accordance with the terms of this Agreement.

6. Charges and payment

6.1 Subscription Fee. Customer shall pay "Fees" on a periodic basis during the Term as described in Section B ('Fees') of this agreement. The Fees shall be fixed for the Initial Term. The Fee for any Renewal Term may be subject to adjustment defined at the time of renewal. Any such inflationary adjustment will be based upon the published UK Retail Price Index (I) in the Renewal Year.

6.2 Simitive shall invoice the Customer in respect of applicable Fees as defined in Section B ('Fees') of this Agreement.

6.3 any other fees relating to additional services Simitive may provide during any one month shall be invoiced as and when they arise, monthly in arrears.

6.4 Should the Customer cancel implementation services with insufficient notice to allow Simitive to redeploy the resource booked, the Customer shall be liable to pay the contracted cost of those services.

6.5 All invoices defined in 6.2 must be paid in full prior to commencement of delivery of the services. All other invoices shall be paid within the agreed payment terms. Should no such terms be agreed all other invoices shall be paid within thirty (30) days of invoice date.

6.6 Simitive and the Customer have agreed the level of Services that Simitive will provide. In the event that the Customer requires additional services in excess of those previously agreed and to the extent that the additional services that the Customer requires are not listed in the Scope of Services then the parties shall negotiate separately suitable charges in respect of the provision of such additional services.

6.7 For the avoidance of doubt, where the customer does not utilise all available Services (as defined in Sections A1, A2 and A3 of this agreement) in any particular period which has already been included within the relevant fees referred to above no refund or credit will be given and the Customer shall not be entitled to roll over any amount of unused service to be used in any subsequent period. Any unused service which has already been paid for/deemed included in respect of any month by way of the normal monthly or annual fees referred to above will automatically be deemed to have lapsed at the end of that month and the Customer shall have no entitlement in respect of the same, whether in relation to any credit against any future fees or service or in relation to any kind of refund.

6.8 You shall be invoiced and pay the charges in respect of the Services, in accordance with this Agreement. Simitive may also charge expenses it incurs in the provision of the Services, which expenses shall be agreed in advance with you via your Customer Representative on a case by case basis (such agreement not to be unreasonably withheld or delayed). For the avoidance of doubt should Customer invite or request Simitive staff to attend Customers premises during delivery of the services any expenses incurred shall be deemed as approved and agreed.

6.9 All charges are exclusive of Applicable Taxes, which Simitive shall add to its invoices at the appropriate rate.

6.10 To the extent that you consider any part of an invoice to be incorrect you should notify Simitive immediately, giving reasonable detail of the reasons why you deem it to be incorrect. Both parties shall seek to resolve the dispute in good faith. However, if we are unable to do so within 7 days of the date of you raising an issue, then it shall be escalated to a meeting between senior directors of Simitive and the Customer who have authority to sign off on the relevant issues on behalf of their respective organisations within 14 days. You must however (and you undertake to) pay the undisputed part of the invoice in accordance with any applicable credit terms. To the extent you do not notify Simitive of any genuine issue or dispute in relation to any invoice within fourteen (14) calendar days of its receipt, you shall be deemed to have accepted that the invoice is correct, due and payable in accordance with this clause 6 and will be precluded from raising any dispute in the future (save in respect of manifest errors).

6.11 Without prejudice to any other right or remedy that Simitive may have, if you exceed any credit terms afforded to you by Simitive pursuant to this Clause 6, either in relation to exceeding the relevant aggregate limit of unpaid sums due to Simitive or you exceed the maximum duration in respect of which Simitive will permit sums to be outstanding, or you otherwise fail in any way to pay Simitive any amount on its due date for payment, Simitive may:

- (a) charge interest on such sum at the rate of 1% of the outstanding sum per month, accruing on a daily basis and being compounded quarterly, from the due date for payment until payment is made, whether before or after any judgment, and you hereby undertake to pay such interest immediately on demand; and/or
- (b) on provision of not less than forty eight (48) hours' notice to you, suspend all Services under this agreement until payment of all sums outstanding has been made in full; and/or

(c) if such failure continues for more than five (5) calendar days, terminate the Agreement forthwith on provision of written notice to you.

7. Termination

- 7.1 Upon expiry of the Initial Term, this agreement shall renew for successive twelve (12) month periods unless terminated in writing by the Customer ninety (90) calendar days before the end of the Initial term or renewal date.
- 7.2 Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate this Agreement, without liability to the other, immediately on giving notice to the other if:
- (a) the other commits a material breach of any of the material terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach, provided that the relevant Party exercises such right within 30 days of either the right to terminate arising (where the breach is irremediable) or the expiry of the above 30 day remedy period (where the breach is remediable), failing which that Party's right to terminate in relation to the breach complained of will lapse in its entirety;
 - (b) the other experiences an insolvency event, is deemed unable to pay its debts as they fall due or suspends or ceases, or threatens to suspend or cease, to carry on a significant part of its business.
- 7.3 In the event that this Agreement is terminated by Customer or by Simitive as a result of a material breach by Customer prior to the completion of the Initial Term or any Renewal Term, Customer shall pay to Simitive the remaining balance of Fees owed for the entire Initial Term or, if then in effect, the entire applicable Renewal Term. Both parties acknowledge that this payment represents a reasonable estimate of Simitive's damages in the event of an early termination.
- 7.4 In the event of termination of this Agreement for any reason, Customer's access and use of the Software shall cease immediately.
- 7.5 In the event of termination of this Agreement for any reason Simitive shall deliver a copy of the Customer's data to Customer in a mutually agreed format on such media or by such method as shall be agreed between Simitive and Customer.

8. Simitive's obligations

- 8.1 Simitive will perform the Services in accordance with any service levels set out in this agreement and with reasonable skill, care and in a suitably professional manner. Unless expressly stated otherwise any dates agreed with Simitive for the performance of Services shall be estimates only and shall not be of the essence of this Agreement.
- 8.2 Subject to the rest of this Agreement Simitive shall use commercially reasonable endeavours to meet the performance dates and any other requirements, service levels and standards specified.
- 8.3 In providing the Services, Simitive shall not knowingly or intentionally breach any laws, enactments, orders, regulations and other similar instruments applicable to the provision of such Services including those relating to health and safety, data protection, non-discrimination, telecommunications, electrical goods and supplies, occupation and use of premises.
- 8.4 To the extent that you have reasonable policies and procedures (including relating to security) which you wish to apply in respect of the provision of the Services, you must notify Simitive of these and, where they are accepted by Simitive, acting reasonably, Simitive shall, and shall ensure that its employees, personnel and sub-contractors shall, comply with those policies and procedures.
- 8.5 Simitive shall not be obliged to proceed with work that it reasonably deems to be dangerous, inappropriate, unlikely to succeed, or liable to cause problems for you generally, but wherever possible shall carry out an acceptable work-around solution.
- 8.6 Provided that such amendment, variation or change does not materially and adversely affect the performance of any of the Services, Simitive is entitled to amend, vary or change, at any time, any hardware, software or any part of this Agreement or the Services. To the extent that any suspension of Services is required to implement such amendment, variation or change, Simitive shall use commercially reasonable endeavours to give advance notice of such suspension and to otherwise continue to perform the Services in accordance with the terms of this Agreement.

9. Your obligations

- 9.1 You are solely responsible for acquiring, servicing, maintaining, and updating all equipment, computers, software and communications services not owned or operated by or on behalf of Simitive, that allow Customer to access and use the Software and Services, and for all expenses relating thereto (plus any applicable taxes). The Customer accepts and acknowledges that any failure to do so could lead to an interruption in the Services (for which Simitive will have no liability of any kind).
- 9.2 You shall (and shall ensure that your personnel and those within your reasonable control shall) at all times use the Software and Services in accordance with any and all operating instructions or procedures that may be issued by Simitive, and amended by Simitive from time to time.
- 9.3 You shall (and shall ensure that your personnel and those within your reasonable control shall) at all times comply with this Agreement and you shall (and, where relevant, shall ensure that your personnel and those within your reasonable control shall):
- (a) co-operate with Simitive, its personnel, affiliates and representatives in all matters relating to the Services and this

Agreement and you shall ensure that the Customer Representative shall have the authority contractually to bind you on any matters relating to the Services and that he/she shall notify Simitive immediately in relation to any issues relating to this Agreement or the Services. Simitive, its personnel, affiliates and representatives shall be entitled to rely on any statements and decisions made, or information provided, by the Customer Representative without any requirement to query or verify the same;

(b) provide, in a timely manner and subject always to third party confidentiality undertakings, such Customer Material and access to all necessary and relevant information and documentation within your possession or control which is reasonably required by Simitive, its personnel, affiliates and representatives for the performance of the Services and ensure that it is accurate in all material respects;

(c) permit Simitive to suspend or vary any Service (or part thereof) as may be required to comply with any changes in applicable legal or regulatory requirements. Where any such suspension or variation is required as a result of your act or omission, you will indemnify Simitive in respect of any and all Losses it may incur in relation thereto;

9.4 If Simitive's performance of its obligations under this Agreement is prevented or delayed by any act or omission by you, your agents, subcontractors, consultants, affiliates, representatives, employees or any other third party within your reasonable control, Simitive shall not be liable for any Losses sustained or incurred by you that arise directly or indirectly from such prevention or delay and time for performance of the Services shall be deemed extended accordingly to reflect the relevant impact on timing caused by such delay.

10. Intellectual Property

10.1 Any Intellectual Property Rights owned by either party prior to the date of this Agreement shall be vested in and remain with that party.

10.2 Any Intellectual Property Rights created, added or otherwise developed by Simitive during the term shall vest in and remain solely the Intellectual Property of Simitive.

10.3 Without prejudice to any rights you may have at law which cannot be excluded or restricted, you undertake that you will not (and will not permit or enable third parties to) make or distribute copies of, tamper with, remove, reproduce, modify, amend, copy, reverse assemble, reverse engineer, reverse compile or decompile, or attempt to discover the source and/or object code of any software or any part thereof which is provided to you by or on behalf of Simitive or to which you otherwise have access by virtue of the provision of the Services.

11. Confidentiality and the parties' property

11.1 Both you and Simitive shall at all times during the relevant term and thereafter keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives, and customer, personnel and/or business information which are of a confidential nature and have been disclosed by one party to the other whether these have been disclosed by or to either party's employees, agents, consultants or subcontractors and any other confidential information concerning the other party's business or its products. For the avoidance of doubt, the terms of this Agreement shall be deemed confidential to Simitive.

11.2 Either party may disclose such information:

(a) to any of its personnel who need to know such information for the purposes of carrying out any obligations under this Agreement; and

(b) as may be required by law, court order or any governmental or regulatory authority.

11.3 The parties shall ensure that all personnel to whom they disclose such information shall comply with this clause 11.

11.4 The parties shall not use any such information for any purpose other than to perform their obligations under this Agreement.

12. Limitation of Simitive's liability

12.1 This clause 12 sets out the entire financial liability of Simitive (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) in respect of:

(a) any breach of this Agreement;

(b) any use made by you of the Services or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

12.2 Simitive does not and cannot warrant the performance or results obtained by Customer in using the Simitive Software, or that the Simitive software will meet Customer's requirements or that the operation of the Simitive Software will be uninterrupted or error free.

12.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

12.4 Nothing in this Agreement limits or excludes the liability of Simitive:

(a) for death or personal injury resulting from negligence; or

(b) for any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation by Simitive; or

(c) for any liability incurred by you as a result of any breach by Simitive of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

12.5 Subject to clauses 12.2 and 12.4, Simitive shall not be liable for loss of profits, loss of revenues, loss of business, loss or corruption of data, loss of operation, loss of production, loss of use of any equipment, depletion of goodwill and/or similar losses, anticipated savings, loss of contracts or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses or any form of Losses arising out of any defect, error or fault in Customer Equipment or Customer Material (other than as caused by Simitive directly).

12.6 Simitive total aggregate liability in respect of the Services shall be capped at the total sum of charges paid to Simitive by you under this contract in the twelve (12) months prior to the event that gave rise to such liability.

13. Personnel

13.1 You accept and acknowledge that Simitive's charges in respect of the Services do not include, nor are they deemed to include, any costs or expenses relating to personnel other than its own personnel.

13.2 Neither party shall, without the prior written consent of the other, at any time from the date of entry into any agreement between the parties up to and including the expiry of twelve (12) months after the termination of the agreement, solicit or entice away from the other party any person who is currently engaged as an employee, consultant or subcontractor of the other party and is, or has been engaged in the provision of the Services.

13.3 To the extent that either party breaches the terms of provisions 13.2 the other party shall, without prejudice to any other rights or remedies which it may have, have the right to terminate this Agreement and arrangements between Simitive and you, without liability, immediately on giving notice.

14. Force majeure

14.1 A party, provided that it has complied with the provisions of clause 14.3, shall not be in breach of this Agreement nor liable for any failure or delay in performance of any obligations under this Agreement other than in respect of payment obligations which are expressly excluded from this clause, (and, subject to clause 14.3 the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("**Force Majeure Event**"), including but not limited to any of the following:

- (a) acts of God, including fire, flood, earthquake, windstorm, snow or other extreme adverse weather conditions or natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;
- (d) nuclear, chemical or biological contamination;
- (e) plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions;
- (f) voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
- (g) any labour dispute, including industrial action or lockouts other than those in relation to Simitive's own employees;
- (h) interruption or failure of utility service, including but not limited to electric power, gas or water, other than where caused by Simitive or those within its control.

14.2 The corresponding obligations of the other party will be suspended to the same extent.

14.3 Any party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance as soon as is reasonably practicable.

15. Data Protection

15.1 Each party shall be responsible for ensuring that it fulfills its respective obligations and responsibilities under the Data Protection Legislation and any other applicable laws relating to the protection of personal data and the privacy of individuals (all as amended, updated or re-enacted from time to time), or the relevant legislation covering the use of personal data applicable to each party in the jurisdiction in which it is based. This includes, but is not limited to the following:

- (a) The parties shall agree the appropriate processes and arrangements under which any necessary data sharing and processing is to be carried out in the provision of the Services and Software under this Agreement. For all purposes related to the applicable Data Protection Legislation, the Customer shall be the Data Controller and Simitive a Data Processor as regards such data sharing and processing.
- (b) Simitive shall not transfer any personal data to any country or territory outside the United Kingdom or European Economic Area.
- (c) The Customer shall notify Simitive of the identities of the users and the administrators authorised to be users of the Software provided and hosted by Simitive under this Agreement (the "Authorised Users");

- (d) Simitive shall enable the appropriate, agreed access and use of the Simitive Software by such Authorised Users;
- (e) The Customer is responsible for ensuring that Authorised Users comply with instructions in respect of the use of the Simitive Software, including those relating to access to, processing and protection of personal data.
- (f) Simitive shall take appropriate technical and organisational measures with the intention of preventing unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- (g) Any Simitive staff with access to the Software shall be subject to appropriate security checks as a condition of their employment and have received appropriate training in data security.
- (h) Simitive shall provide such assistance as required to enable the Customer to meet its obligations under the Data Protection Legislation in relation to the security of processing, notification of personal data breaches and data protection impact assessments.

15.2 Simitive shall process personal data provided by the Customer only for the following lawful purposes;

- (a) to perform its duties and obligations under this Agreement;
- (b) in connection with the provision, implementation, monitoring, operation, evaluation and support of the Simitive Software;
- (c) to manage its provision of the Simitive Software and Services;
- (d) to carry out statistical analysis;
- (e) for administration, accounting, and archival purposes;

15.3 The parties agree that they will use reasonable endeavours to ensure that they do not, and do not cause the other Party to, breach the Data Protection Legislation (or other equivalent and applicable legislation in any jurisdiction in which a party is based) by their acts or omissions.

15.4 Simitive will delete or destroy all personal data supplied by the Customer within 3 months of the date of termination or otherwise end of the term of this agreement. Deleted content may persist in backup copies for up to one year, but will be encrypted and not available to third parties.

15.5 The Purpose of Processing is to allow the Customer to use the Simitive Software.

15.6 The Type of Personal Data will include names, email addresses, job titles, employment commencement and end dates. If chosen by the Customer it may also include Gender, Ethnicity or other such characteristics as required by the Customer to enable the statistical reporting.

15.7 Categories of Data Subjects will be employees or former employees of the Customer.

16. **Variation**

16.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties by authorised signatories.

17. **Waiver**

17.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

17.2 A waiver (which may be given subject to conditions) of any right or remedy provided under this Agreement or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

17.3 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law or in equity.

18. **Severance**

18.1 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision, to the extent required, shall be deemed not to form part of this Agreement and the validity and enforceability of the other provisions of this Agreement shall not be affected.

19. **Entire agreement**

19.1 This Agreement and any documents referred to in this Agreement constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

19.2 Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty ("**Representation**") of any person (whether a party to this Agreement or not) other than as

expressly set out in this Agreement. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.

20. Assignment

- 20.1 Neither party shall, without the prior written consent of the other, assign, transfer, charge, mortgage, sub-contract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this Agreement save that either party may assign its rights and transfer its obligations on a transfer, amalgamation or reconstruction of its business or group.

21. No partnership or agency

Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. Rights of third parties

Except as provided in this clause 22, this Agreement does not create any right enforceable by any person who is not a party to it ("**Third Party**") under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a Third Party which exists or is available apart from that Act.

23. Governing law and jurisdiction

- 23.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 23.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).