SimMedicate Inc (SimMedicate)

SIMMEDICATE CLIENT TERMS AND CONDITIONS

1. Definitions

1.1 In this Agreement (as hereinafter defined) unless the context otherwise requires, the following terms shall have the following meanings:

"Agreement" means these Terms and Conditions together with the Service Procedures.

"Application" means the specific hosted application for which the Service is provided, known as safeMedicate and described on the SIMMEDICATE website.

"Charges" means the fee payable for the provision of the Service and any other charges payable, as further defined in the clause 6.

"Client Information*"* means data input, created or used by the Client or End User in using the Application and Service.

"Downtime" means an outage causing interruption or failure to the provision of the Service.

"End User" means an individual that at any time has been provided a Logon by SIMMEDICATE as an authorised End User.

"EULA" means the licence agreement between SIMMEDICATE and an End User in respect of the End User's use of the Application.

"Intellectual Property Rights" means all copyrights, patents, registered and unregistered design rights, trade marks and service marks and applications for any of these, together with all database rights, trade secrets, know-how and other intellectual property rights in all parts of the world.

"**Logon**" means the username provided by SIMMEDICATE for each End User required by the Client.

"**Permitted Browsers and Software**" means the software and browsers which the Client and End Users use to enable the Service and Application to be provided as set out on the SIMMEDICATE website.

"Service" means the application service to be provided by SIMMEDICATE as described on the SIMMEDICATE website.

"Service Procedures" means procedures accessible by the Client online to provide instructions and guidance for the Client's management of the Service, which may be amended and updated from time to time.

"Terms and Conditions" means the standard terms and conditions contained in clauses 1 to 16 of this document entitled SIMMEDICATE Client Terms and Conditions.

1.2 In the event of and only to the extent of any conflict between these Terms and Conditions and the Service Procedures, these Terms and Conditions shall prevail.

1.3 Where the terms 'competence' or 'competency' are used within the Application, Service, Service Procedures and the associated documentation including user guides, sales and marketing materials and website content, SIMMEDICATE

refer explicitly to "Cognitive Competence" as defined by the European Parliament (2008)[1] in its recommendations on the establishment of a European Qualifications Framework for Lifelong Learning. "Cognitive Competence" relates only to the development and assessment of knowledge of the medication dosage calculation problem solving process and excludes any other forms of competence such as "functional", "personal" or "ethical competence" that is required for safe medication practice in a clinical setting.

2. Term

This Agreement will come into effect when the Client first purchases a Logon and will remain in force until all Logons have expired unless terminated earlier in accordance with the termination provisions of this Agreement.

3. Service Provision

3.1   SIMMEDICATE agrees to provide the Application and Service to the Client and to End Users in consideration of the payment of the Charges by the Client, subject to the terms and conditions of this Agreement.

3.2   SIMMEDICATE will make available to the Client its Service Procedures and will ensure that updated Service Procedures will be made available to the Client whenever they are re-issued. Information contained in the Service Procedures may include, but is not limited to:

(a)   technical support offered by SIMMEDICATE;

(b)   training offered by SIMMEDICATE;

(c)   access to user guides.

4. Scope of Client's Use

4.1   SIMMEDICATE grants to the Client a non-exclusive, non-transferable licence to use the Service and Application as set out below:

(a)   to provide training to its own employees for the Client's normal business purposes;

(b)   for teaching students attending its courses;

(c)   if the Client is an individual consumer, for his or her own personal training purposes,

provided always that such use shall not exceed the total number of Logons.

4.2   The Client may use the Service only by accessing the Service in accordance with the procedures set out in the Service Procedures. Further use is restricted to:

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[1] European Parliament (2008) *Glossary: RECOMMENDATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning.* [online] EUCEN. Available from: www.eucen.org/EQFpro/GeneralDocs/FilesFeb09/GLOSSARY.pdf [Accessed 28 September 2009]

(a) entering, editing, transferring, moving or deleting its input comprising Client Information, documents, data, files and other content within the Service; and

(b) providing interconnection with End Users who have been issued Logons but only to the extent necessary to enable them to participate legitimately in using the Application and Service.

4.3 The Client acknowledges that it is its sole responsibility to determine that the Application and Service meet the needs of its business and End Users and to satisfy itself that the Application is ready for operational use in its business before it is so used.

4.4 The Client is responsible for maintaining validation, error correction, back up and reconstruction of its own software.

4.5 The licence granted to the Client in clause 4.1 is personal to the Client and the Client is not permitted to assign, transfer, sub-license, or otherwise dispose of any of the licensed rights to use the Service or any component to a third party, other than to End Users under the terms of this Agreement. Nothing in this Agreement transfers any proprietary rights in the Service from SIMMEDICATE to the Client.

End Users

4.7 The Client is granted the right to grant a licence to End Users in the form of the Logons to permit the End User to access and use the Application and Service only in relation to the Client's business purposes or End Users' own use.

4.8 The Client will provide SIMMEDICATE with sufficient information to enable SIMMEDICATE to provide the number of Logons purchased by the Client from time to time.

4.9 The Client warrants to SIMMEDICATE that the number of End Users shall not exceed the number of Logons purchased by the Client and if the Client wishes to increase the number of End Users it must purchase further Logons from SIMMEDICATE.

4.9 The Client acknowledges its responsibility for ensuring that End Users:

(a) are properly licensed in order to access and use the Service in advance of such access and use; and

(b) comply with all relevant terms of this Agreement and the EULA.

4.10 If the Client learns or suspects that any End User is not complying with the terms of this Agreement, the Client must notify SIMMEDICATE immediately.

4.11 In relation to the Application and Service, the Client shall and shall procure that the End User shall:

(a) keep itself aware of all current practices and standards to avoid use of outdated regimes of calculating dosages; and

(b) employ good clinical judgement in selecting appropriate dosage equations and set up orientations encountered and obtained through the use of the Application and Service.

5. Client Obligations

5.1 The Client shall, and shall procure that any End User shall:

(a) use the Service only for lawful purposes and in accordance with this Agreement and the EULA; and

(b) comply in every respect with all the instructions which SIMMEDICATE provides concerning the Service, including the requirements set out in the Service Procedures; and

(c) use and adhere to the Logons including user names, passwords and any authentication codes or security procedures which SIMMEDICATE may notify to the Client from time to time.

5.2 The Client shall not, and shall procure that any End User shall not:

(a) reproduce, disseminate or otherwise disclose the content of any Application except as expressly set out in this Agreement or the EULA;

(b) electronically transmit any Application over a network except as necessary for the Client's licensed use of the Application;

(c) use run-time versions of any third-party products which may be embedded in any Application, for any use other than the use of that Application;

(d) modify, disassemble, decompile, or reverse engineer any Application except to the extent permitted by law, and must first give 90 days' notice to SIMMEDICATE;

(e) sub-license or otherwise grant or transfer possession of any copy of any Application to any other party outside the terms of this Agreement or the EULA;

(f) use any Application in any way not expressly provided for by this Agreement or the EULA.

5.3 The Client shall and shall ensure that the End Users use only the Permitted Browsers and Software.

5.4 The Client is responsible for acquiring and maintaining all licences and permissions necessary in respect of any third party software it may use in connection with the Service. The Client confirms that any Permitted Browsers and Software, Client Information or other materials provided by the Client to SIMMEDICATE or utilised by the Client in the Service will not infringe any Intellectual Property Rights of any third party, and will not be obscene or defamatory, and will not violate the laws or regulations of any state which may have jurisdiction over such activity.

5.5 SIMMEDICATE shall be entitled to access or use any Client Information to enable SIMMEDICATE to perform its obligations under this Agreement.

5.6 The Client acknowledges that it is responsible for its input and the input of its End Users to the Service and for any use that it or its End Users make of such input, and that SIMMEDICATE has no responsibility for such input or its use.

5.7 If the Client learns about or is informed of any of the components, processes or methods of operating any software comprised in any Service it will treat that knowledge or information as SIMMEDICATE's trade secret, and not use it to the benefit of any party other than SIMMEDICATE or convey it in any way to any third party or allow any third party to acquire it.

5.8 If the Client is in breach of any of its obligations set out in clauses 5.1 to 5.7, then, without prejudice to the other terms and conditions in this Agreement SIMMEDICATE will be entitled to charge the Client for staff time engaged on

rectifying any resulting problems at SIMMEDICATE's standard charge rates for the time being.

5.10 The Client shall fully indemnify SIMMEDICATE from and against all liabilities, losses, damages, costs and expenses (including legal expenses) suffered or incurred by SIMMEDICATE as a result of or in connection with:

(a) any unauthorised access to, or use or misuse of, the Service by the Client, any End User, employee, agent or sub-contractor of the Client;

(b) any unauthorised access to, or use or misuse of, the Service by any third party if such access, use or misuse was permitted or facilitated by the Client or such End User, employee, agent or sub-contractor.

5.11 The Client shall fully indemnify SIMMEDICATE from and against all liabilities, losses, damages, costs and expenses (including legal expenses) suffered or incurred by SIMMEDICATE as a result of or in connection with:

(a) the ownership or nature or any use made of Client Information;

(b) the Client breach of any of the provisions of this Agreement;

(c) the End User's breach of any of the provisions of this Agreement or the EULA; and

(d) the use of the contents of the Application or Service and/or training or its methodologies by the Client, any End Users or any third party.

6. Charges

6.1 The Client will pay SIMMEDICATE the Charges in respect of the Service at the rates set out on the SIMMEDICATE website from time to time and according to the payment terms set out in these Terms and Conditions. All Charges are exclusive of Value Added Tax and any similar taxes, which will be applied in accordance with prevailing legislation in force at the tax point date.

6.2 Costs which are additional to the Charges and which are also the Client's responsibility include:

(a) PCs, modems, printers or other equipment which may be necessary to access and use the Service;

(b) installation and testing of any communications lines, links or interfaces or any equipment or service used in connection with the Service.

7. Payment Terms

7.1 All invoices are payable 30 days from receipt. Payments which are not received when payable will be considered overdue and remain payable by the Client together with interest for late payment from the date payable at the statutory rate applicable as well after as before any judgment, and independent of such judgment. This interest will accrue on a daily basis and be payable on demand.

7.2 Notwithstanding the above provision for late payment, in this event SIMMEDICATE may at its option, and without prejudice to any other remedy at any time after payment has become due, terminate or temporarily suspend this Agreement.

7.3 If SIMMEDICATE becomes entitled to terminate this Agreement for any reason, any sums then due to SIMMEDICATE will immediately become payable in full.

8. Security

8.1 SIMMEDICATE will use reasonable endeavours to effect and maintain at all times continuous and sufficient security measures, in order to safeguard Client Information from unauthorised access and use, and to minimise the risk of a security breach.

8.2 SIMMEDICATE will promptly notify the Client of any security attack, which it learns of or suspects, which appears to be directed towards the Client Information.

9. Client Information

9.1 The Client acknowledges and agrees that it is entirely responsible for the Client Information and any use that it or any End User or third party may make of it for any purposes, and that SIMMEDICATE will have no responsibility for the Client Information or such use. Without prejudice to the generality of the previous sentence the Client shall and shall procure that each End User shall:

(a) in performing its obligations under this Agreement and the EULA fully to comply with, all laws, regulations, licences or binding codes or standards of practice relevant to personal data (including without limitation the Data Protection Act 1998);

(b) not provide any item of Client Information or upload, transmit or download any message or material that:

(i) is defamatory, racist or sexist, threatening or menacing to any person or group of people, or contains any obscene elements (in particular, anything which is or could be interpreted as paedophilia), or which in SIMMEDICATE's reasonable opinion is likely to cause annoyance or distress to any person; or

(ii) infringes the copyright or other Intellectual Property Rights of any other person, company or partnership, anywhere in the world; or

(iii) in any way act in a manner that constitutes, or may involve SIMMEDICATE in, sending any unsolicited e-mail.

10. Service Availability

10.1 Subject to the provisions set out in this clause, SIMMEDICATE will use reasonable endeavours to make the Service and Application available at all times.

10.2 Notwithstanding the above, the Service may be suspended for so long as is reasonably necessary subject to prior agreement with the Client, such agreement not to be unreasonably withheld or delayed:

(a) to enable either party to comply with an order or request from a governmental, or other competent regulatory body or administrative authority; or

(b) to enable SIMMEDICATE to carry out work which is necessary in its reasonable opinion to maintain or improve the Service; or

(c) to carry out standard maintenance and support,

provided that SIMMEDICATE will use all reasonable endeavours to schedule such Downtime during hours of low usage of the Service in order to minimise

impact on the Services and to ensure that there is no permanent material degradation of the Service.

10.3 If the Application requires immediate correction to enable it to run effectively or for immediate compliance with a governmental or regulatory requirement, SIMMEDICATE may suspend that Application without advance warning for so long as reasonably necessary to implement the correction or to ensure compliance.

10.4 SIMMEDICATE will be entitled in its sole discretion to make changes or upgrades to the Application or Service or their accessibility, or to the Service Procedures, provided that such changes or upgrades do not cause any material reduction in functionality. SIMMEDICATE will use reasonable endeavours to give at least seven days' written notice of any such changes. The Application may be suspended for so long as is reasonably necessary, but SIMMEDICATE will use all reasonable endeavours to minimise the Downtime that may be caused by such change or upgrade.

10.5 In the event of Downtime as specified in sub-clauses 10.2, 10.3 or 10.4 above, SIMMEDICATE will use reasonable endeavours to provide regular status reports to the Client's representative nominated for such purposes by the Client at reasonable intervals.

11. Intellectual Property Rights Indemnity

11.1 If the Client learns of any claim that the Service or part of it infringes any Intellectual Property Rights of any third party in the jurisdiction in which the Client is entitled to use such Service the Client must inform SIMMEDICATE promptly of the claim and grants sole control of the defence to SIMMEDICATE to enable SIMMEDICATE to settle or litigate it, and does not itself settle or litigate it,

11.2 In the event of any claim or if the use of the Service is restricted as a result of any claim, SIMMEDICATE may at its option and expense: (a) obtain the right for the Client to continue to use the Service; or (b) modify or replace the Service for the Client to use; or (c) if the use of the Service is permanently prevented by the courts, terminate it and refund to the Client a sum equal to the sum the Client will have paid for its use over the 12 months immediately prior to such termination. SIMMEDICATE will not be liable if any claim is caused by combining the Service with any software, database or information or data of any kind of which SIMMEDICATE has not approved.

11.3 These clauses 11.1 and 11.2 state SIMMEDICATE's entire liability and the Client's entire remedy in respect of any Intellectual Property Rights infringement by the Service.

12. Warranties

12.1 SIMMEDICATE warrants that it is either the sole and exclusive owner or an authorised licensee of all Intellectual Property Rights in the Application and Service and reserves all rights.

12.2 SIMMEDICATE warrants that it will provide the Service using all reasonable skill and care in accordance with the terms of this Agreement.

12.3 SIMMEDICATE uses all reasonable endeavours to maintain the Service free of bugs and viruses but SIMMEDICATE strongly recommends that the Client and End Users should have their own effective anti-virus programs.

12.4 SIMMEDICATE does not and cannot control the network on which the technology operates or the flow of data to or from its network. Such flow depends largely on the performance of services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections. Although SIMMEDICATE will use all commercially reasonable efforts to avoid such events and take all actions it deems appropriate to remedy such events, SIMMEDICATE cannot guarantee that such events will not occur. Accordingly, SIMMEDICATE cannot and does not warrant that the Service will be uninterrupted, error-free or entirely secure, and disclaims any and all liability resulting from or related to such events.

12.5 The Client acknowledges that SIMMEDICATE does not provide any back-up software or processing facilities covering equipment, data, operating systems or application software unless any are specified in the Service Procedures, and the Client agrees that SIMMEDICATE will not be responsible or liable if, for any reason concerning any of these, the Service cannot be provided.

12.6 SIMMEDICATE does not make any other warranties, guarantees or representations concerning the operation or performance or the Service. Except as set out in clauses 12.1. and 12.2, all conditions, warranties or other terms that might be implied or incorporated into this Agreement relating to the SIMMEDICATE's provision of the Service or Application, whether by statute, common law or otherwise, are excluded to the fullest extent permitted by law.

12.7 The Client is entirely responsible for deciding to select the Service for its own business purposes and those of its End Users and SIMMEDICATE accepts no liability for any use to which the Client puts the Service.

12.8 The Client represents and warrants to SIMMEDICATE that it has obtained, where required by law or regulatory authority, all registrations, permits, licences and approvals necessary in any relevant country for it to perform its obligations hereunder, or alternatively, that it is exempt from obtaining them. Upon request, the Client will provide SIMMEDICATE with copies of all such registrations, permits, licences and approvals. The Client further warrants and undertakes to SIMMEDICATE that in performing its obligations under the terms of this Agreement it will comply with all applicable national and local laws and regulations.

13. Limitations on Use

13.1 SIMMEDICATE reserves the right to deny any End User access to the Service and to direct the Client to remove an End User's Logon and access to the Service on reasonable grounds, including but not limited to a breach by the End User of any term of this Agreement or the EULA but SIMMEDICATE will notify the Client of any such refusal promptly by telephone or e-mail.

13.2 If at any time the Client's or any End User's access to, or use of, the Service is not in compliance with any applicable law or regulation, the Client will be in breach of this Agreement, and SIMMEDICATE will be entitled at its sole discretion to terminate it under clause 16 and to discontinue the Service in respect of the Client and any such End User. The Client acknowledges and agrees that SIMMEDICATE is entitled to report such a breach or non-compliance to any relevant regulatory body or agency, and that SIMMEDICATE will not incur any liability to the Client or End User as a result of the breach, the non-compliance, or SIMMEDICATE's reporting of it.

13.3 In addition to any other remedies available at law or in equity and without prejudice to its rights under this Agreement, SIMMEDICATE will have the right to suspend the Service immediately if deemed reasonably necessary by SIMMEDICATE in order to protect the proper interests of SIMMEDICATE or of its other clients. If practicable and depending on the nature of the reason for such suspension, SIMMEDICATE may, in its absolute discretion, give the Client an opportunity to remedy the situation. In such case, if the Client remedies the situation, SIMMEDICATE will promptly restore the Service.

14. Limitation of liability

14.1 Neither Party's liability for death or injury resulting from its own negligence or that of its employees, agents or sub-contractors shall be limited.

14.2 Subject to clause 14.1, SIMMEDICATE shall not be liable in respect of any: (i) loss of profit, goodwill, business revenue, anticipated savings or contracts; or (ii) any type of indirect or consequential loss or damage.

14.3 SIMMEDICATE will not be liable for any damages arising from negligence or otherwise unless the Client has established reasonable back up, accuracy checks and security precautions to guard against possible malfunctions, loss of data or Client Information, or unauthorised access, and has taken reasonable steps to minimise any loss.

14.4 The Client acknowledges and agrees that the Service provided by SIMMEDICATE is a training and educational tool only and that the Client and End Users must use their professional judgements and experience in a practical setting. SIMMEDICATE will not be liable for the use of the contents of the Application or Service and/or training or its methodologies by the Client, any End Users or any third party.

14.5 Subject to Clauses 14.1 to 14.4, SIMMEDICATE's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to the Charges paid by the Client in the previous 12 months.

14.6 The Client acknowledges and agrees that the above provisions of this clause 14 and clause 5 are reasonable and reflected in the Charges which would be higher without those provisions and the Client will accept such risk and/or insure accordingly.

15. Termination

15.1 This Agreement may be terminated immediately by notice in writing:

(a) by SIMMEDICATE if the Client fails to pay any sums due under this Agreement by the due date notwithstanding any other provisions for late payment in this Agreement;

(b) by either party if the other party is in material or continuing breach of any of its obligations under this Agreement and fails to remedy the same (if capable of remedy) within a period of 30 days after written notice of the breach by the other party;

(c) by either party if the other party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether

compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123(1)(e) or (2) of the Insolvency Act 1986 or anything analogous to such event occurs in any applicable jurisdiction.

15.2 Any termination of this Agreement under this clause 15 will be without prejudice to any other rights or remedies of either party under this Agreement or at law and will not affect any accrued rights or liabilities of either party at the date of termination.

15.3 On termination of this Agreement for any reason, all EULAs will automatically terminate and the Client and its End Users must immediately cease all use of all Service and promptly certify in writing to SIMMEDICATE that this has been done.

16. General Contract Provisions

16.1 **Entire Agreement**

This Agreement constitutes the entire agreement between the parties and supersedes any previous prior representations, writings, negotiations, understandings or agreements whether written or oral between the parties relating to the subject matter of this Agreement.

16.2 **Variations**

SIMMEDICATE may vary any of the provisions of this Agreement by giving the Client not less than 30 days notice of such variation.

16.3 **Force Majeure**

Other than in respect of the Client's obligations to make payments, neither party will be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control, including (without limitation) act of God, act of government or regulatory authority, war, fire, flood, explosion or civil commotion, or failure of the Internet. If such delay or non-performance arising from such cause or causes persists for more than 90 days either party may terminate this Agreement on written notice to the other without incurring any further liability under its terms.

16.4 **Severability**

If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced unless the substantive purpose of this Agreement is thereby frustrated, in which case either party may terminate this Agreement forthwith on written notice.

16.5 **Waiver**

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

16.6 **Rights of Third Parties**

A person who is not a party to this Agreement has no right to benefit under or to enforce any term of this Agreement.

16.7 **Assignment**

The Client shall not assign, sub-contract or otherwise deal with this Agreement or any rights and obligations under this Agreement without the prior consent of SIMMEDICATE.

16.8 **Notices**

Any notice given under this Agreement by the Client must be to SIMMEDICATE c/o Alan Williamson, Registered Agent at 4210 W. Roland St. Tampa FL 33609. SIMMEDICATE may give notice to the Client by either posting such notice on the SIMMEDICATE website, at the postal address or email address given by the Client at the time of purchasing the Logons. Notice will be deemed received and properly served immediately when posted on the SIMMEDICATE website, 1 hour after an email is sent or 3 days after the date of posting of any letter.

16.9 **Governing Law and Jurisdiction**

These Terms and Conditions are governed by and construed according to the laws of the State of Florida, USA.