



## END USER AGREEMENT

This **Agreement** is entered into between SimSpace Corporation., a Delaware corporation, with an address at 320 Congress St. Suite 7, Boston, Massachusetts, USA ("**Supplier**") and the Ordering Activity under GSA Schedule contracts identified in the Order that has downloaded or otherwise procured the SimSpace Products for use as an end user ("**End User**"), effective as of the date End User accepts the terms hereof (the Effective Date). The parties agree as follows:

**1. Grant of Rights.** Subject to all of the terms and conditions of this Agreement, and the payment of all applicable fees, and except as set forth in Section 5 (Term), during the applicable Term, the Supplier hereby grants to End User, as applicable:

(a) with respect to the Software Services and Infrastructure, a non-exclusive, non-transferable right to access and use during the applicable Term the Software Services and Infrastructure provided to End User by Supplier with this Agreement, and all upgrades, enhancements, updates, and new version releases of any of the foregoing that may be made available by Supplier to End User from time to time only as authorized in this Agreement and for the purposes specified herein and in the related documentation. "Software Services" means the subscription services for access to and use of SimSpace's software products, central software application environment and associated infrastructure and communication services, and associated user documentation and supplemental materials, to include third party-provided products accessed through the SimSpace environment. "Infrastructure" means SimSpace's datacenter facilities, and/or approved hosted datacenter facilities, including the operating system and database to provide you with access to the Software Services; and

(b) with respect to the On-Prem Software, limited, non-exclusive, non-sublicensable and non-transferable license to use during the applicable Term the On-Prem Software provided to End User by Supplier with this Agreement in the original, unmodified, machine-readable, object code form only, (whether incorporated into the Hardware or made available separately) as delivered by Supplier, including, without limitation, any data structures created by such programs and all upgrades, enhancements, updates, and new version releases of any of the foregoing that may be provided by Supplier to End User from time to time only as authorized in this Agreement and for the purposes specified in the SimSpace Products and related documentation. "On-Prem Software" means the Supplier software in machine-readable object code, including any new production versions of the On-Prem Software and associated user documentation and supplemental materials, provided to End User by SimSpace. "Hardware" means the physical components of SimSpace's equipment, if any, delivered as part of the SimSpace Products.

**2. Restrictions.**

**2.1 Copies.** Except as authorized under this paragraph, no copies of the SimSpace Products, or any portions thereof may be made by End User or any person under End User's authority or control. In no event will any copies of the SimSpace Products be utilized by End User in excess of End User's license rights.

**2.2 Restrictions.**

(a) End User will not, nor will End User permit, allow, or assist any other person to, reverse engineer, decompile, disassemble, re-engineer, reverse assemble, reverse compile, or translate or create, or attempt to create, the source code of the SimSpace Products or its structural framework. End User will not modify, enhance, or create derivative works based upon the SimSpace Products in whole or in part or otherwise change the SimSpace Products without Supplier's prior written consent in each such instance. End User agrees that any modification, enhancement, derivative work, or other improvement to the SimSpace Products developed by Supplier, End User, End User's employees or independent contractors, whether with or without Supplier's consent, advice, or support, will be Supplier's exclusive property, and End User hereby assigns to Supplier all such rights, title, and interest therein and agrees to take any affirmative actions necessary to further manifest such assignment. Any such modified, enhanced, or derivative versions of the SimSpace Products will not constitute material different from the SimSpace Products and, as such, will be governed under the terms and conditions of this Agreement.

(b) End User will not, nor will end User permit, allow, or assist any other person to use the SimSpace Products: (i) in any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries); (ii) for the purpose of exploiting, harming, or attempting to exploit or harm, others in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise; (iii) to send, knowingly receive, upload, download, use, or re-use any material which violates the rights of any individual or entity established in any jurisdiction; (iv) to transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain letter," "spam," or any other similar solicitation; (v) to impersonate or attempt to impersonate Supplier, Supplier personnel, or any other person or entity (including, without limitation, by using e-mail addresses or screen names associated with any of the foregoing); (vi) to engage in any other conduct that restricts or inhibits Supplier's ownership, use, or control of the SimSpace Products, or which, as determined by us, may harm Supplier or may expose Supplier to liability. Additionally, End User will not, nor will End User permit, allow, or assist any other person to: (i) use the SimSpace Products in any manner that could disable, overburden, damage, or impair the SimSpace Products; (ii) use any robot, spider, or other automatic device, process, or means to access the SimSpace Products for any purpose, including monitoring or copying



## END USER AGREEMENT

any SimSpace Products, or resources available on the SimSpace Products; (iii) use any manual process to monitor or copy any SimSpace Products or resources available on the SimSpace Products or for any other unauthorized purpose without Supplier's prior written consent; (iv) use any device, software, or routine that interferes with the proper working of the SimSpace Products; (v) introduce any viruses, trojan horses, worms, logic bombs, or other software or material which is malicious or technologically harmful; (vi) attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the SimSpace Products or any server, computer, database, or other resource or element connected to the SimSpace Products; (vii) violate, attempt to violate, or knowingly facilitate the violation of the security or integrity of the SimSpace Products; (viii) otherwise attempt to interfere with the proper working of the SimSpace Products.

(c) Supplier shall have the right to: (i) monitor End User's use of the SimSpace Products for any purpose in Supplier's sole discretion and as Supplier sees fit; (ii) take any action Supplier deems necessary or appropriate in Supplier's sole discretion if Supplier believes a End User's conduct violates this Agreement, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of any authorized users of the SimSpace Products or the public, or could create liability for Supplier; (iii) take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the SimSpace Products; (iv) terminate or suspend End User's access to all or part of the SimSpace Products for any or no reason, including without limitation, any violation of this Agreement. Without limiting the foregoing, Supplier has the right to fully cooperate with any law enforcement authorities or court order requesting or directing Supplier to disclose the identity or other information of anyone who accesses or uses the SimSpace Products.

**3. Supplier's Rights.** End User acknowledges and agrees that all SimSpace Products, including any modifications, revisions, enhancements, or derivative works thereto, are Supplier's sole and exclusive proprietary property protected under law. End User further acknowledges and recognizes Supplier's exclusive right, title, and interest in and to the SimSpace Products, including any and all associated patent, copyright, trademark, trade secret, or other proprietary rights. This Agreement does not convey to End User an ownership interest in or to the SimSpace Products but only a limited and revocable right of use, in accordance with this Agreement.

**4. Product Fees.** The product fees paid by End User (or on behalf of the End User, if applicable) for the SimSpace Products are paid in consideration of the rights granted under this Agreement.

**5. Term.** This Agreement is effective upon End User's acceptance of the Agreement and will continue until terminated in accordance with the term of the applicable Sales Order, Master Software Services Agreement or Master Software License Agreement, or other binding contractual document for the purchase of SimSpace Products. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, SimSpace Products shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the appropriate deciding authority. In the event of termination due to inactivity, End User may be granted further access upon written request to Supplier. Upon termination of this Agreement by Supplier, End User agrees to return to Supplier, if applicable, all media containing the SimSpace Products and extracts therefrom, remove or render inaccessible the SimSpace Products from End User's system as applicable, and discontinue all access and use of the SimSpace Products.

**6. Limited Warranties.**

**6.1 Warranty.** SUPPLIER WARRANTS, FOR END USER'S BENEFIT ALONE, AS APPLICABLE: (A) WITH RESPECT TO THE HARDWARE (IF ANY) AND THE ON-PREM SOFTWARE, FOR A PERIOD OF 30 DAYS FROM THE DATE OF COMMENCEMENT OF THIS AGREEMENT, THAT THE HARDWARE (IF ANY) AND ON-PREM SOFTWARE MADE AVAILABLE BY SUPPLIER TO END USER IS FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP AND WILL OPERATE SUBSTANTIALLY IN ACCORDANCE WITH THE PUBLISHED DOCUMENTATION AND SPECIFICATIONS THEREIN, UNDER NORMAL, PROPER, AND INTENDED USAGE; AND (B) WITH RESPECT TO THE SOFTWARE SERVICES AND INFRASTRUCTURE, DURING THE APPLICABLE SUBSCRIPTION TERM, THE SOFTWARE SERVICES AND INFRASTRUCTURE WILL OPERATE SUBSTANTIALLY IN ACCORDANCE WITH THE PUBLISHED DOCUMENTATION AND SPECIFICATIONS THEREIN, UNDER NORMAL, PROPER, AND INTENDED USAGE. SUPPLIER DOES NOT WARRANT THAT THE SIMSPACE PRODUCTS WILL MEET END USER'S NEEDS OR WILL BE ERROR-FREE IN ALL CIRCUMSTANCES, OR THAT ALL ERRORS WILL BE CORRECTED.

**6.2 Warranty Claims.** IF, DURING THE APPLICABLE WARRANTY PERIOD (AS STATED ABOVE), THE SIMSPACE PRODUCTS ARE OTHERWISE NONCOMPLIANT WITH SUPPLIER'S WARRANTIES IN SECTION 6.1, END USER MAY DISCONTINUE USE OF THE SIMSPACE PRODUCT(S) AND UPON NOTIFICATION TO SUPPLIER, SUPPLIER MAY, AT SUPPLIER'S OPTION, EITHER: (I) REPAIR OR REMEDY THE NONCOMPLIANT SIMSPACE PRODUCT; (II) PROVIDE A LIKE REPLACEMENT SIMSPACE PRODUCT AT NO ADDITIONAL CHARGE. END USER AGREES THAT THE FOREGOING CONSTITUTES THE SOLE AND EXCLUSIVE REMEDY FOR SUPPLIER'S BREACH OF ANY OF WARRANTY. SUPPLIER WILL HAVE NO OBLIGATION TO MAKE REPAIRS OR OFFER REPLACEMENTS TO THE EXTENT ANY ISSUE RESULTS, IN WHOLE OR IN PART, FROM CATASTROPHE, END USER'S FAULT OR NEGLIGENCE, FROM IMPROPER OR



## END USER AGREEMENT

UNAUTHORIZED USE, MAINTENANCE, OR MODIFICATION OF THE SIMSPACE PRODUCTS, USE OF THE SIMSPACE PRODUCTS IN A MANNER FOR WHICH IT WAS NOT DESIGNED, OR BY CAUSES EXTERNAL TO THE SIMSPACE PRODUCTS SUCH AS, BUT NOT LIMITED TO, POWER FAILURE OR ELECTRIC POWER SURGES.

**6.3 Disclaimers.** EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, THE SIMSPACE PRODUCTS ARE PROVIDED “AS IS” AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AGAINST INFRINGEMENT.

**7. Limitation of Liability.** SUPPLIER’S CUMULATIVE LIABILITY TO END USER OR TO ANY THIRD PARTY UNDER THIS AGREEMENT FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SIMSPACE PRODUCTS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE FEES ACTUALLY PAID BY END USER TO SUPPLIER FOR THE USE OF THE SIMSPACE PRODUCTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER WILL NOT BE LIABLE TO END USER OR TO ANY THIRD PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES, ARISING FROM OR RELATING TO THIS AGREEMENT, THE SIMSPACE PRODUCTS, OR END USER’S ABILITY OR INABILITY TO USE THE SIMSPACE PRODUCTS, ANY INACCURACY OR INCOMPLETENESS OF INFORMATION CONTAINED IN THE SIMSPACE PRODUCTS, OR ANY DELAY OR FAILURE OR ALTERATION OF ANY TRANSMISSION OR DATA, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**8. Reserved..**

**9. Intellectual Property.** End User recognizes Supplier’s ownership in and title to its trademarks and service marks, including any and all common law and registered rights throughout the world (hereinafter the “Trademarks”). End User also recognizes Supplier’s ownership in and to any and all copyrights, patents, trade dress, trade secrets, and/or any other intellectual property rights related to the SimSpace Products (hereinafter “Intellectual Property Rights”). Intellectual Property includes proprietary documentation, software, techniques, tools and processes in providing the SimSpace Products, and any associated professional services provided under this Agreement in support of the SimSpace Products. No right, license, or interest is granted to any Intellectual Property Right unless expressly provided herein, and Supplier reserves all rights therein. No right, license, or interest in or to any of the Trademarks is granted hereunder and End User agrees that End User will not assert any right, license, or interest with respect to such Trademarks. Furthermore, End User will not contest the validity of any of the Trademarks or Intellectual Property Rights, claim adversely to Supplier any right, title, or interest in and to the Trademarks or Intellectual Property Rights and will not use, register, apply to register, or aid a third party in registering the Trademarks or Intellectual Property Rights during the term of this Agreement or any time thereafter. End User agrees to cooperate with Supplier if Supplier determines that recording End User as a End User of the Trademarks is advisable, and to execute any documents submitted to End User for this purpose.

**10. Analysis.** Supplier may (i) compile statistical and other information related to the performance, operation, and use of the SimSpace Products; and (ii) use End User data in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses (i) and (ii) are collectively referred to as “Service Analyses”). Supplier may make Service Analyses publicly available; however, Service Analyses will not incorporate End User data, personal information, or End User’s Confidential Information in a form that could serve to identify End User or any individual. Supplier retains all intellectual property rights in Service Analyses.

**11. Notices.** Any notice required or permitted under this Agreement must be in writing and will be deemed to have been given 48 hours after it has been delivered to a recognized overnight courier or delivery service which provides international service, fees prepaid, addressed to the party for whom it is intended at the address for such party as last provided to the other.

**12. Governing Law.** This Agreement will be construed and governed in accordance with the Federal laws of the United States, without regard to any rules of conflicts or choice of law provisions that would require the application of the laws of any other jurisdiction. This Agreement will be construed and enforced without regard to the United



## END USER AGREEMENT

Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act.

### 13. Reserved.

**14. Severability.** Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration will have no effect on the validity or enforceability of the remaining terms hereof and the offending provision shall be deemed automatically modified by the minimum necessary to render it valid and enforceable under applicable law, with the nature and extent of the modifications to be determined by a court of competent jurisdiction.

**15. No Waiver.** The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder will not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

**16. Export Laws.** The SimSpace Products and any technical data provided by Supplier (collectively, the "Controlled Items") are subject to U.S. export controls, including the Export Administration Regulations, 15 C.F.R. Part 730 et seq. ("EAR"). The Controlled Items may not be exported, re-exported, or transferred (in-country), or used for any purpose prohibited by any applicable U.S. or foreign international trade laws and regulations that apply to the Controlled Items, including the EAR. End User agrees that End User will not export, re-export, or transferred (in-country) the Controlled Items without first having obtained applicable U.S. or foreign government export licenses or authorizations.

### 17. Miscellaneous.

**17.1 Amendments; Entire Agreement.** Supplier may non-materially amend or modify the terms of this Agreement, in its reasonable discretion, from time to time. End User's acceptance of the modified terms or continued access or use of the SimSpace Products after the terms of this Agreement are revised, constitutes End User's express consent to the non-materially modified Agreement. Notwithstanding the foregoing, no amendment, change, or extension to this Agreement is valid or binding, unless approved in writing by Supplier. This Agreement, together with any written agreement concerning the SimSpace Products between Supplier and End User, represents the entire agreement between Supplier and End User concerning the SimSpace Products, and any and all other prior or contemporaneous agreements, representations, statements, negotiations and undertakings with respect to such subject matter are terminated and superseded hereby.

**17.2 Assignment.** This Agreement will bind and inure to the benefit of the parties, as applicable, and their respective permitted successors and assigns; provided, that End User will not voluntarily or involuntarily in any form or manner assign, sublicense, transfer, pledge, lease, network, rent, loan, distribute, or share license of the SimSpace Products, or other rights under this Agreement to or with any other person or entity, including, without limitation, any assignment or transfer incident to End User merger or consolidation with another entity, any assignment or transfer by operation of law or any use of the SimSpace Products to provide hosted services, to operate a service bureau or publish, disclose or otherwise display in writing, electronically or otherwise any part of the SimSpace Products or such other rights without Supplier's prior written consent in each such instance. Any such assignment, sublicense, transfer, pledge, lease, network, rental, loan, or sharing of End User's license or any other rights under this Agreement absent Supplier's prior written consent will be void and of no force or effect and, as will any such publication, disclosure or display.

**17.3 Limitation on Claims.** Except for actions for nonpayment or violation of Supplier's rights in the SimSpace Products, Trademarks or Intellectual Property Rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than 2 years after the cause of action has accrued.

**17.4 Remedies.** Except as otherwise provided in this Agreement, all remedies of the parties hereunder are non-exclusive and are in addition to all other available legal and equitable remedies.

**17.5 Force Majeure.** In accordance with GSAR 552.212-4(f), Except with respect to any payment obligations, neither party will be responsible or liable for failure to fulfill its obligations under this Agreement (except for payment of any purchase price or other fees) due to any major unforeseeable event beyond the control of, and not caused by the fault or negligence of, such party or its agents, including, without limitation, an act of God, pandemic, epidemic, quarantine, lockdown, fire, earthquake, flood, explosion, action of the elements, war invasion, terrorism, insurrection, riot, mob violence, sabotage, inability to procure equipment, facilities, materials or supplies in the open market, failure of power, failure of transportation, strike, lockout, action of labor unions, condemnation, requisition, law or order of government, civil or military authorities; provided that the party failing to perform in such event will promptly resume or remedy, as the case may be, the performance of its obligations hereunder as soon as practicable.

**17.6 Headings; Survival.** The headings and captions of the sections and paragraphs of this Agreement are for convenience of reference only and are not to be used to modify or interpret this Agreement. The terms of Sections 2, 3, 6.3, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of this Agreement will survive the termination of this Agreement. The controlling language of this Agreement



## END USER AGREEMENT

is English. If End User has received a translation of this Agreement into another language, it has been provided for End User's convenience only.