SimMedicate Inc (SimMedicate)

END USER TERMS AND CONDITIONS

1. Definitions

1.1   In these Terms and Conditions (as hereinafter defined) unless the context otherwise requires, the following terms shall have the following meanings:

"Client" means the End User's employer or educational institution that purchased the End User's Logon pursuant to the Client Agreement.

"Client Agreement" means the agreement between the Client and SIMMEDICATE relating to inter alia the purchase of the End User's Logon.

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

"End User Information" means data input, created or used by the End User in using the Software

"Intellectual Property Rights" means all copyrights, patents, registered and unregistered design rights, trademarks 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 to the End User.

"**Permitted Browsers and Software**," means the software and browsers which the End User uses to enable the Software to be used as set out on the SIMMEDICATE website.

"**Software**" means the SIMMEDICATE software product known as safeMedicate.

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

1.2   Where the terms 'competence' or 'competency' are used within these Terms and Conditions, the Software 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

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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]

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. Terms and Password

2.1   These Terms and Conditions will come into effect when the End User first registers a Logon and will remain in force until that Logon has expired unless terminated earlier in accordance with these Terms and Conditions.

2.2   On first registration of a Logon, the End User will be asked to create a password. The End User must keep this password confidential and must not disclose it or share it with anyone. The End User will be responsible and liable for the activities that occur under its password. If the End User knows or suspects that someone else knows its password the End User must notify SIMMEDICATE immediately.

3. Scope of Use

3.1   In consideration of the End User complying with its obligations under these Terms and Conditions, SIMMEDICATE grants to the End User a non-exclusive, non-transferable license to use the Software for his or her own personal training purposes.

3.2   The End User acknowledges and agrees that the End User's use of the Software forms part of the End User's studies, training and/or employment with the Client.

3.3   The End User is responsible for maintaining validation, error correction, back up and reconstruction of its own software.

3.4   The license granted to the End User in clause 3.1 is personal to the End User and the End User is not permitted to assign, transfer, sub-license, or otherwise dispose of any of the licensed rights to use the Software to a third party. Nothing in this Agreement transfers any proprietary rights in the Software from SIMMEDICATE to the End User.

3.5   The End User shall:

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

(b) Employ good clinical judgment in selecting appropriate dosage equations and set up orientations encountered and obtained through the use of the Software;

(c) Use the Service only for lawful purposes and in accordance with these Terms and Conditions;

(d) Comply in every respect with all the instructions which SIMMEDICATE provides concerning the Software; and

(e) Use and adhere to the Logons including user names, passwords and any authentication codes or security procedures which SIMMEDICATE may notify to the End User from time to time.

3.6   The End User shall not:

(a) Reproduce, disseminate or otherwise disclose the content of the Software except as expressly set out in this Agreement;

(b) Electronically transmit any Software over a network except as necessary for the End User's licensed use of the Software;

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

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

(e) Use the Software in any way not expressly provided for by these Terms and Conditions.

3.7   The End User shall use only the Permitted Browsers and Software.

3.8   The End User is responsible for acquiring and maintaining all licenses and permissions necessary in respect of any third party software it may use in connection with the Software. The End User confirms that any Permitted Browsers and Software, End User Information or other materials provided by the End User to SIMMEDICATE or utilized by the End User 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.

3.9   SIMMEDICATE shall be entitled to access or use any End User Information to enable SIMMEDICATE to perform its obligations under these Terms and Conditions.

3.10 The End User acknowledges that it is responsible for its input to the Software and for any use that it makes of such input, and that SIMMEDICATE has no responsibility for such input or its use.

3.11 If the End User learns about or is informed of any of the components, processes or methods of operating the Software 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.

3.12 The End User 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 unauthorized access to, or use or misuse of, the Software by the End User;

(b) Any unauthorized access to, or use or misuse of, the Software by any third party if such access, use or misuse was permitted or facilitated by the End User.

3.13 The End User 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 the:

(a) Ownership or nature or any use made of End User Information;

(b) End User's breach of any of these Terms and Conditions; and

(c) Use of the contents of the Software and/or training or its methodologies by the End User.

4. Security

4.1   SIMMEDICATE will use reasonable endeavors to effect and maintain at all times continuous and sufficient security measures, in order to safeguard End User Information from unauthorized access and use, and to minimize the risk of a security breach.

5. End User Information

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

(a) In performing its obligations under these Terms and Conditions fully to comply with, all laws, regulations, licenses 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 End User 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 pedophilia), 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, s   ending any unsolicited e-mail.

6. Availability

6.1   Subject to the provisions set out in this clause, SIMMEDICATE will use reasonable

endeavors to make the Software available at all times.

6.2   Notwithstanding the above, the End User's use of the Software may be suspended for so long as is reasonably necessary:

(a) To enable SIMMEDICATE 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 Software; or

(c) To carry out standard maintenance and support.

7. Intellectual Property Rights Indemnity

7.1   If the End User learns of any claim that the Software or part of it infringes any Intellectual Property Rights of any third party in the jurisdiction in which the End User is entitled to use such Software, it must inform SIMMEDICATE promptly of the claim and grants sole control of the defense to SIMMEDICATE to enable SIMMEDICATE to settle or litigate it, and does not itself settle or litigate it.

7.2   In the event of any claim or if the use of the Software is restricted as a result of any claim, SIMMEDICATE may at its option and expense: (a) obtain the right for the End User to continue to use the Software; or (b) modify or replace the Software for the End User to use; or (c) if the use of the Software is permanently prevented by the courts, terminate it. SIMMEDICATE will not be liable if combining the Software with any software, database or information or data of any kind of which SIMMEDICATE has not approved causes any claim.

7.3   These clauses 7.1 and 7.2 state SIMMEDICATE's entire liability and the End User's entire remedy in respect of any Intellectual Property Rights infringement by the Software.

8. Warranties

8.1   SIMMEDICATE uses all reasonable endeavors to maintain the Software free of bugs and viruses but SIMMEDICATE strongly recommends that the End User should have its own effective anti-virus programs.

8.2   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 Software will be uninterrupted, error-free or entirely secure, and disclaims any and all liability resulting from or related to such events.

8.3   The End User acknowledges that SIMMEDICATE does not provide any back-up software or processing facilities covering equipment, data, operating systems or application software and the End User agrees that SIMMEDICATE will not be responsible or liable if, for any reason concerning any of these, the Software cannot be provided.

8.4   All conditions, warranties or other terms that might be implied or incorporated into these Terms and Conditions relating to the Software, whether by statute, common law or otherwise, are excluded to the fullest extent permitted by law.

9. Limitations on Use

9.1   SIMMEDICATE reserves the right to deny any End User access to the Software and to remove an End User's Logon and access to the Software on reasonable grounds, including but not limited to a breach by the End User of any these Terms and Conditions.

9.2   If at any time the End User's access to, or use of, the Software is not in compliance with any applicable law or regulation, the End User will be in breach of these Terms and Conditions, and SIMMEDICATE will be entitled at its sole discretion to terminate the End User' use of the Software under clause 11. The End User 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 End User as a result of the breach, the non-compliance, or SIMMEDICATE's reporting of it.

9.3   In addition to any other remedies available at law or in equity and without prejudice to its rights under these Terms and Conditions, SIMMEDICATE will have the right to suspend the End User's use of the Software 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 End User an opportunity to remedy the situation. In such case, if the End User remedies the situation, SIMMEDICATE will promptly restore its use of the Software.

10. Limitation of liability

10.1 SIMMEDICATE's liability for death or injury resulting from its own negligence or that of its employees, agents or sub-contractors shall not be limited.

10.2 Subject to clause 10.1, 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.

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

10.4 The End User acknowledges and agrees that the Software is a training and educational tool only and that the End User must use its professional judgment and experience in a practical setting. SIMMEDICATE will not be liable for the use of the contents of Software and/or training or its methodologies by the End Users or any third party.

10.5 Any and all liabilities arising in connection with the performance or contemplated performance of this agreement by SIMMEDICATE shall be dealt with in the Client Agreement and the Client shall be responsible for taking any action on behalf of the End User.

11. Termination

11.1 SIMMEDICATE shall be entitled to terminate this agreement immediately by notice in writing if:

(a) The End User is in material or continuing breach of any of its obligations under these Terms and Conditions and fails to remedy the same (if capable of remedy) for a period of 30 days after written notice of the breach by SIMMEDICATE; and

(b) Instructed by the Client.

11.2 This agreement will automatically terminate if the Client Agreement terminates.

11.3 Any termination of this agreement by SIMMEDICATE will be without prejudice to any other rights or remedies of either party under these Terms and Conditions or at law and will not affect any accrued rights or liabilities of SIMMEDICATE at the date of termination.

11.4 On termination of this agreement for any reason, the End User must immediately cease all use of the Software.

12. General Contract Provisions

12.1 **Entire Agreement**

These Terms and Conditions constitute the entire agreement between the parties and supersede any previous prior representations, writings, negotiations, understandings or agreements whether written or oral between the parties relating to the subject matter of these Terms and Conditions.

12.2 **Variations**

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

12.3 **Force Majeure**

SIMMEDICATE will not be liable to the End User for any delay or non-performance of its

obligations under these Terms and Conditions 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.

12.4 **Severability**

If any of these Terms and Conditions are 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 these Terms and Conditions is thereby frustrated, in which case either party may terminate this agreement forthwith on written notice.

12.5 **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.

12.6 **Assignment**

The End User 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.

12.7 **Notices**

Any notice given under these Terms and Conditions by the End User must be to SIMMEDICATE c/o Alan Williamson, Registered Agent at 4210 W. Roland St, Tampa FL 33609. SIMMEDICATE may give notice to the End User by posting such notice on SIMMEDICATE website or at the email address given by the End User at the time of registering the Logon. Notice will be deemed received and properly served immediately when posted on the SIMMEDICATE website and 1 hour after an email is sent.

12.8 **Governing Law and Jurisdiction**

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