



Software and Services Supply Agreement

Appendix A: Conditions of Contract

1. Interpretations

- 1.1** As used in this Agreement the following terms and expressions shall have the following meanings:
- “Agreement” means this Agreement, comprising of the clauses and each Software and Services Order relating to this Agreement;
- “Change Request” means the order for a Requested Revision or New Release of the Software;
- “Charges” means the charges set out in each Software and Services Order or Change Request;
- “Confidential Information” means all information designated as such by either party in writing together with all other information which relates to the business, affairs, software, developments, trade secrets, know-how, personnel, the customers and suppliers of either party or information which may reasonably be regarded as the confidential information of the disclosing party;
- “Intellectual Property Rights” means patents, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, know-how, trade or business names and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom);
- “New Release” means a new version of the Software incorporating enhancements to the current version issued by System Simulation to the Customer;
- “Personal Data” means any data relating to a living person which has been shared by the Customer with System Simulation under this Agreement;
- “Requested Revision” means any request to modify the current Software and Services Order which is made by the Customer to System Simulation;
- “Services” means the services provided hereunder by System Simulation in support of the Software as specified in each Software and Services Order;
- “Software” means the computer software provided hereunder by System Simulation as specified in each Software and Services Order;
- “Software and Services Order” means the order for Software and Services in Appendix B, or any new order for Software and Services, as amended by applicable Change Requests;
- “Specification” means the functional and performance specification for the Software referred to in the Software and Services Order;
- “System Environment” means the system of integrated computer hardware, operating systems software, computer network and computer peripherals on which the Software will operate, as specified in the Software and Services Order;
- “Use” means the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display) or otherwise to utilise the Software for purposes of processing data in the performance of the Customer’s business operations. “Use” does not include the right to distribute the Software.

- 1.2** Headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.
- 1.3** References to Clauses refer to clauses in this Agreement.

2. Supply of Software and Services

- 2.1** Upon receipt of a duly authorised Software and Services Order agreed and signed by both parties System Simulation shall supply:
 - 2.1.1 The Software specified in the Software and Services Order; and
 - 2.1.2 The documentation specified in the Software and Services Order, and
 - 2.1.3 The Services specified in the Software and Services Order

3. Acceptance Procedures

- 3.1** The Customer shall test the Software over a period of thirty days or as agreed in writing from the date of delivery of the Software with the co-operation of System Simulation in order to determine whether the Software is in accordance with the Specification and all other applicable provisions herein.
- 3.2** If it is determined by the Customer that the Software is in accordance with the Specification and all other applicable provisions herein, the Customer shall notify System Simulation in writing of its acceptance thereof.
- 3.3** If it is determined by the Customer that the Software, or any element of the Software, is not in accordance with the Specification and all other applicable provisions herein, the Customer shall have the option to elect one or more of the following remedies:
 - 3.3.1 To accept such items of Software as the Customer may decide and pay a pro-rated Charge therefor or such other charge, as may be agreed between the parties; or
 - 3.3.2 To extend the testing period for a further agreed period or periods, during which System Simulation shall correct the fault which caused the acceptance tests to be recorded as unsuccessful; or
 - 3.3.3 To terminate this Agreement in accordance with Clause 10.1.3
- 3.4** If the Customer extends the testing period for a period or periods pursuant to Clause 3.3.2 and the tests have not been recorded as successful by the end of that period, the Customer shall have the option to elect one or more of the remedies specified in Clauses 3.3.1, 3.3.2 and 3.3.3.
- 3.5** If at any time the Customer shall commence live running of the whole or any part of the Software then the Customer shall be deemed to have accepted the Software.

4. Change Control

- 4.1** New Releases and Requested Revisions to current Software and Services Orders shall be requested in writing in the form of a Change Request which shall be agreed by both parties to accommodate any change in the Customer specific requirements.
- 4.2** New Software and new Services shall be requested in writing in the form of a new Software and Services Order which shall be agreed by both parties to accommodate orders for new Software or Services required by the Customer.
- 4.3** The parties shall negotiate in good faith to agree in writing:
 - 4.3.1 Changes or additions to the Software, Services or the Specification provided that no change thereto shall be permitted without the Customer's prior written consent if its effect would be to reduce the functionality or performance of the Software below that required in the Specification in its original form;

- 4.3.2 The charges for the New Release, Requested Revision or new Software;
 - 4.3.3 A timetable for the delivery, commencement and completion of acceptance testing of the New Release, new Software or Requested Revision;
 - 4.3.4 Documentation or changes to the documentation and delivery of such as shall be necessary to describe and enable proper use.
- 4.4** System Simulation shall only proceed with the delivery of a New Release or Requested Revision to the current Software and Services Order or the execution of any new Software and Services Order when the matters referred to in Clause 4.3 have been agreed by the parties. Upon such agreement being made the Customer and System Simulation shall exchange a Change Request or a new Software and Services Order as appropriate which shall be signed by both parties.

5. Licences Granted

- 5.1** Upon delivery and acceptance of the Software and the payment of all Charges System Simulation grants to the Customer a non-exclusive, non-commercial, non-transferable licence to Use the Software including any System Simulation proprietary software integrated as part of the Software subject to this Clause 5.. The number of concurrent users which may Use the Software at any time shall not exceed the number specified in the Software and Services Order.
- 5.2** The copyright and all other Intellectual Property Rights in System Simulation proprietary software including but not limited to Index+ and associated software tools are and shall remain vested in System Simulation.
- 5.3** The Customer shall not acquire title to the Intellectual Property Rights in System Simulation proprietary software which is supplied hereunder.
- 5.4** The Customer shall Use the Software within the System Environment specified in the Software and Services Order. However, the Customer shall be entitled, upon giving notice to System Simulation, to transfer the Software at no additional charge to another computer hardware platform provided that platform is compatible with the System Environment.
- 5.5** The Customer shall not make any copies of the Software except such copies as are required in the normal Use of the Software and such number of copies of the Software as is reasonable for the purpose of back-up and operational security. All such copies of the Software shall include the original machine readable copyright notice, and a label affixed to the media identifying the Software and stating: "This medium contains an authorised copy of a copyrighted software which is the property of System Simulation Limited".
- 5.6** The Customer shall not make any alteration or modification of the whole or any part of the Software nor permit the Software or any part thereof to be combined with or become incorporated in any other programs without the written consent of System Simulation.
- 5.7** The Customer shall not acquire any rights or entitlement to distribute the Software.
- 5.8** The Customer shall be entitled to engage a third party to Use the Software subject to and in accordance with this Agreement on behalf of the Customer.
- 5.9** Nothing in this Clause shall prevent System Simulation or the Customer from using data processing or programming techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by System Simulation or the Customer of any Intellectual Property Rights.

6. Payments

- 6.1** In consideration of the supply of the Software in accordance with the terms of this Agreement, the Customer shall pay the Charges specified in the Software and Services Order in accordance with the payment terms specified in the Software and Services Order.
- 6.2** In consideration of the performance of the Services in accordance with the terms of this Agreement, the Customer shall pay the charges specified in the Software and Services Order in accordance with the payment terms specified in the Software and Services Order.
- 6.3** Payment shall be made within thirty days of receipt by the Customer at its address for invoices given in the Software and Services Order of a valid invoice from System Simulation.
- 6.4** Charges for recurring Services are revised annually. Unless otherwise agreed each increase in the Charges shall not exceed the percentage increase in the Retail Prices Index (All Items) for the year immediately preceding the date of the increase.

7. Warranties and Representations

- 7.1** System Simulation warrants and represents that:
 - 7.1.1** System Simulation has full capacity and authority and all necessary consents to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of System Simulation;
 - 7.1.2** Upon acceptance, the Software shall meet the Specification and all other applicable provisions of the Agreement;
 - 7.1.3** The Software shall operate in and be fully compatible with the System Environment;
 - 7.1.4** The Customer's Use and operation of the Software shall not infringe any Intellectual Property Rights of any third party.
- 7.2** Any warranty of fitness of the Software for any particular purpose is expressly excluded and in no event will System Simulation be liable for any consequential loss. System Simulation is excluded from all liability for loss or damage to business, property or individuals arising out of any cause beyond reasonable control.

8. Credits and Publicity

- 8.1** A credit "Developed by System Simulation using Index+ software. Index+ © System Simulation Ltd 2004-2020" or as agreed, shall be included in each copy of the Software.
- 8.2** The Customer agrees that System Simulation may demonstrate the Software loaded with an agreed set of the Customer's data, including text, images and other digitised media, to prospective clients and at relevant conferences and exhibitions for the purpose of marketing and publicity of System Simulation software and services. System Simulation agrees to modify the Customer's data in any way requested by the Customer to exclude sensitive data and agrees that no data will be passed to any third party at any time without the written consent of the Customer.
- 8.3** The Customer agrees that one or more screen shots of the Software including the Customer's data may be used by System Simulation in promotional and marketing materials including print materials such as brochures, leaflets, adverts and electronic media.

9. Confidentiality

- 9.1** Both parties shall keep secret and not disclose and shall procure that its employees and the employees of any sub-contractor keep secret and do not disclose any Confidential Information obtained by reason of this Agreement except information which is in the public domain.

10. Termination

- 10.1** This Agreement may be terminated:

10.1.1 Forthwith by either party if the other commits any material breach of this Agreement and which shall not have been remedied within thirty days of a written request to do so;

10.1.2 Forthwith by either party if the other shall commit an act of bankruptcy, or have an administrative order or other receiver, manager, administrator, trustee or similar officer appointed over the whole or part of his undertakings or assets;

10.1.3 By the Customer for any other reason provided that sixty days notice in writing is given to System Simulation and providing that all System Simulation costs in developing the Software pursuant to Software and Services Orders at the date of termination and reasonable compensation for loss of earnings are fully paid.

11. Force Majeure

- 11.1** Neither System Simulation nor the Customer shall be liable for failure to perform its obligations under the Agreement if such failure results from circumstances beyond either party's control.

12. Source Code

- 12.1** System Simulation will if the Customer so requires enter into an escrow agreement with the Customer and an escrow agent and make a deposit to the escrow agent in accordance with that agreement so that in the event of termination under the provision of Clause 10.1.2 the same code may be released to the Customer for its subsequent Use under the terms of this Agreement and for no other purpose.
- 12.2** Any requirement to enter into an escrow agreement will be stated in a Software and Services order.

13. Data Protection

- 13.1** In this clause, "Privacy and Data Protection Requirements" means the Data Protection Act 1998, the General Data Protection Regulation (EU 2016/679), and all applicable laws and regulations relating to the processing of personal data and privacy, including any amendments made to those laws and regulations, and where applicable the guidance and codes of practice issued by the Information Commissioner.
- 13.2** The Customer may pass Personal Data to System Simulation, and in this case the parties acknowledge that the Customer is a data controller and System Simulation is a data processor.
- 13.3** Both parties shall comply with the Privacy and Data Protection Requirements when sharing or processing Personal Data.

- 13.4** Personal Data will only be shared where necessary for fulfilment of this Agreement and where the sharing is relevant and proportionate. The purpose for any sharing of Personal Data is the fulfilment of this Agreement. The type of any shared Personal Data is chosen by the Customer. Shared data might include names and business-place contact details of Customer staff, data from the operation of Customer web sites, and data collected as part of the Customer's business, for example data from the Customer's collections management activities.
- 13.5** System Simulation shall only process personal data on written instructions from the Customer. Written instructions may be within this Agreement or may be issued separately. In the event that System Simulation is required by law to carry out processing beyond the Customer's written instructions, System Simulation shall inform the Customer before processing, unless prohibited by law. Unless agreed in writing, Personal Data will not be transferred outside of the European Economic Area.
- 13.6** System Simulation shall ensure that any Personal Data is processed only by people or organisations who have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality, and that they only process the Personal Data within the Customer's instructions, unless required to do otherwise by law.
- 13.7** System Simulation shall implement appropriate technical and organisational measures to ensure a level of security for any Personal Data, taking into account the state of the art, implementation costs, risks, likelihood and severity of accidental or unlawful loss, alteration, unauthorised disclosure or access to the Personal Data.
- 13.8** The Customer acknowledges and authorises System Simulation to make use of sub-processors for provision of data storage and server platforms. System Simulation will inform the Customer of any such use and give notice of any change of sub-processor, allowing the Customer the opportunity to object. Sub-processors will be engaged on written terms substantially the same as, and no less stringent than, the terms contained in this clause 13..
- 13.9** Each party will assist the other in reasonable and necessary compliance with Privacy and Data Protection Requirements, including assistance with audits and responses to data subject requests.
- 13.10** Any Personal Data held by System Simulation will be deleted or returned at the choice of the Customer, within 90 days of termination of this Agreement.
- 13.11** System Simulation charges fees for the delivery of services including data protection services and obligations. Where these are not covered in Software and Services Orders under this Agreement, they will be invoiced at the prevailing standard rates.

14. Amendments to this Agreement

- 14.1** This Agreement shall not be varied or amended unless such variation or amendment has been agreed in writing by a duly authorised representative of System Simulation on behalf of System Simulation and by a duly authorised representative of the Customer on behalf of the Customer.

15. Security

- 15.1** The Customer will take all reasonable precautions to prevent copying or distribution of the Software outside of this Agreement. In the event of such copying or distribution being identified the Customer will compensate System Simulation to the amount of lost licence charges.

16. Staffing

- 16.1** The parties hereto will not seek to employ each other's staff. during the term of this Agreement plus twelve months after final delivery and acceptance.

17. Assignment

- 17.1** Neither of the parties shall assign or otherwise transfer this Agreement or any of its rights hereunder without the written permission of the other party.

18. Notices

- 18.1** All notices delivered in accordance with this Agreement shall be given in writing to the relevant party at its address specified above.

19. Choice of Law

- 19.1** This Agreement shall be governed by English law.

20. Entire Agreement

- 20.1** This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

21. Dispute Resolution

- 21.1** If any dispute or difference whatsoever shall arise between the parties in connection with or arising out of this Agreement, either party may give the other seven days' notice to resolve the dispute or difference through Alternative Dispute Resolution (ADR) in accordance with the mediation procedure of the Centre for Dispute Resolution. If the parties fail to agree terms of settlement of their dispute or difference within fifty-six days of the receipt of such notice or the party to whom the notice was given refuses to participate in the ADR procedure then the matter shall be litigated, without prejudice to either party's right at any time to obtain immediate interim court relief.
- 21.2** The parties submit to the exclusive jurisdiction of the English courts in connection with any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation including non-contractual disputes or claims.