CAPITAL GAIN CONSULTANTS

CAPITAL-GAIN CONSULTANTS
CLOUD END-USER LICENSE AGREEMENT (EULA)

NOTICE: THIS IS A LEGALLY BINDING AGREEMENT BETWEEN THE RECIPIENT OF THE PRODUCTS (THE "CUSTOMER") AND CGC CAPITAL-GAIN CONSULTANTS GMBH ("CGC"). PLEASE READ IT CAREFULLY.
IF YOU CLICK THE "I ACCEPT" BUTTON:

1   **YOU AGREE THAT CUSTOMER WILL BE BOUND TO THE TERMS OF THIS CLOUD SERVICES TERMS AND CONDITIONS (THE "AGREEMENT");**

2   **YOU REPRESENT AND WARRANT THAT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER; AND**

3   **YOU REPRESENT AND WARRANT THAT YOU HAVE READ AND AGREED TO THE TERMS OF THIS AGREEMENT. ALTERNATIVELY, BY USING THE PRODUCTS, CUSTOMER AGREES TO BE BOUND BY THESE TERMS.**

IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT CLICK "I AGREE" AND DO NOT USE THE PRODUCTS.

CLOUD SERVICES TERMS AND CONDITIONS

These Cloud Services Terms and Conditions (this "**Agreement**") is a binding agreement between you ("**Customer**") and CGC Capital-Gain Consultants GmbH ("**CGC**") (collectively, the "**Parties**" and each, a "**Party**"). **CGC PROVIDES THE PRODUCTS ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH SUCH TERMS AND CONDITIONS BY CLICKING THE "ACCEPT" BUTTON OR CHECKING THE "ACCEPT" BOX IN THIS AGREEMENT. BY ACCEPTING THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, CUSTOMER (A) ACCEPTS THIS AGREEMENT AND AGREES THAT CUSTOMER IS LEGALLY BOUND BY ITS TERMS AND (B) IF CUSTOMER IS A CORPORATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ORGANIZATION, THAT CUSTOMER HAS THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH CORPORATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ORGANIZATION. IF CUSTOMER DOES NOT AGREE TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, CUSTOMER WILL NOT AND DOES NOT HAVE ANY RIGHT TO ACCESS, USE, OR LICENSE THE PRODUCTS.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NO RIGHT TO ACCESS, USE, OR LICENSE THE PRODUCTS IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY PRODUCTS THAT CUSTOMER DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF SUCH PRODUCTS.

This Agreement consists of the following: (i) the terms and conditions set forth in the CGC General Terms and Conditions ("**GTCs**"); (ii) the Cloud Services Addendum; (iii) the SaaS Product Schedule (as applicable); (iv) the Hosting Product Schedule (as applicable); and (v) the Data Processing Addendum (as applicable); and (v) any Transaction Documents executed by the Parties and entered into in accordance with the GTCs.

CAPITAL GAIN CONSULTANTS

<u>CGC GENERAL TERMS AND CONDITIONS</u>

1. DEFINITIONS

1.1. <u>Definitions</u>. The following capitalized terms used in this Agreement shall have the respective meanings specified below or as otherwise set forth in this Agreement:

"**Addenda**" means two or more Addendum.

"**Addendum**" means any of the following: Cloud Services Addendum and Data Processing Addendum (if applicable).

"**Affiliates**" means, as to any entity, any other entity that, directly or indirectly, Controls, is Controlled by or is under common Control with such entity. To avoid misunderstanding, for CGC "Affiliates" means any direct or indirect wholly owned subsidiary of CGC.

"**Agreement**" has the meaning set forth in the Preamble.

"**Application**" shall mean the installed software program on the Customer's device that is provided to Customer by CGC for download.

"**CGC**" has the meaning set forth in the Preamble.

"**CGC Indemnitees**" has the meaning set forth in Section 9.3 (Indemnification by Customer).

"**Confidential Information**" has the meaning set forth in Section 5.1 (Confidential Information).

"**Control**" means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.

"**Customer**" has the meaning set forth in the Preamble.

"**Customer Content**" means all software, data (including personal data), information, text, images, audio, video, photographs, non-CGC or third-party applications, and other content and material, in any format, provided by Customer, any of Customer's users, or on behalf of Customer that is stored in, or run on or through, the Products.

"**Disclosing Party**" has the meaning set forth in Section 5.1 (Confidential Information).

"**Documentation**" has the meaning set forth in the applicable Addenda or Schedules, as applicable and as the context may require.

"**Effective Date**" means the date that Customer accepts this Agreement by clicking the "Accept" button or checking the "Accept" box.

"**Export Control Laws**" has the meaning set forth in Section 14.10 (Export Restrictions).

"**Force Majeure**" has the meaning set forth in Section 14.3 (Force Majeure).

"**GTCs**" has the meaning set forth in the Preamble.

"**Hosting Services**" shall mean the hosting of software, by CGC for Customer pursuant to this Agreement through a cloud infrastructure provided by CGC or by a third party on behalf of CGC.

"**Initial Term**" has the meaning set forth in Section 10.1 (Term of GTCs).

"**Intellectual Property Rights**" means any patent rights, copyrights, trademarks, trade secrets, moral rights, and other proprietary or intellectual property rights worldwide.

"**OFAC SDN List**" has the meaning set forth in Section 14.11 (Sanctions).

"**Party**" and "**Parties**" have the meaning set forth in the Preamble.

"**Product**" means the SaaS Product or Hosting Services or Application, as applicable, that is provided to Customer by CGC pursuant to a Transaction Document or on an evaluation basis or as a free trial as set forth in Section 2.2.

"**Receiving Party**" has the meaning set forth in Section 5.1 (Confidential Information).

"**Renewal Term**" has the meaning set forth in Section 10.1 (Term of GTCs).

"**Restricted Person**" has the meaning set forth in Section 14.11 (Sanctions).

"**SaaS Product**" means the subscription-based, hosted software-as-a-service product that is provided to Customer by CGC.

"**Sanctions Laws**" has the meaning set forth in Section 14.11 (Sanctions).

"**Schedule**" means the SaaS Product Schedule (as applicable) or Hosting Product Schedule (as applicable) specified in an applicable Transaction Document.

"**Streamlined Rules**" has the meaning set forth in Section 14.12 (Binding Arbitration).

"**TD Effective Date**" has the meaning set forth in Section 10.2 (Transaction Document Term).

"**TD Term**" has the meaning set forth in Section 10.2 (Transaction Document Term).

"**Term**" has the meaning set forth in Section 10.1 (Term of GTCs).

"**Third-Party Products**" means products (including any software-as-a-service products) and software of a third-party vendor supplied by CGC or incorporated by CGC into its Products.

"**Transaction Document**" means order form entered into by the Parties pursuant to which CGC provides Products to Customer in accordance with this Agreement.

"**€**" shall mean lawful money of Germany.

1.2. References. Except where otherwise specified, all Euro amounts are expressed in EUROs (EURO).

2. USE OF PRODUCTS

2.1. Right to Use. In accordance with the terms of the Agreement, CGC will deliver and make the Products listed in the Transaction Document available to Customer through CGC's Simulate365 Dashboard or through CGC's Virtual Machine (VM) Hosting Service or through CGC's Add-on Manager Application. Customer has the right to use the Products as set forth in the Transaction Document and this Agreement.

2.2. Evaluation of Products and Free Products. If a Product is provided by CGC on an evaluation basis or as a free trial, then subject to Customer's compliance with this Agreement, CGC grants to Customer a nonexclusive, worldwide, nontransferable, nonsublicensable, limited, revocable right during the applicable evaluation or free trial term to use the Product solely for evaluating whether Customer wishes to purchase a commercial right to access and use such Product. Notwithstanding anything to the contrary in this Agreement, CGC does not provide maintenance and support, warranties, service levels and applicable credits, indemnification, with respect to such Products.

2.3. Transaction Documents. Customer may purchase Products from time to time by entering into Transaction Documents. Each Transaction Document will refer to this Agreement. Depending on which Products Customer purchases in the Transaction Documents, Customer may be subject to additional terms included in the Addenda, which are hereby incorporated into and made a part of this Agreement. Customer shall comply with any of the applicable Addenda, as indicated on the relevant Transaction Document.

3. PAYMENTS AND INVOICING

3.1. Invoicing. In accordance with the invoicing schedule set forth in the applicable Transaction Document, CGC shall provide Customer with an invoice specifying the fees for the Products provided pursuant to the applicable Transaction Document.

3.2. Payment. Unless otherwise agreed in the applicable Transaction Document, Customer shall pay all fees specified in the applicable invoice for the Products within thirty (30) days from the invoice date. Customer shall pay a late charge of 1.5% per month on all payments which are not paid when due.

3.3. Taxes. Fees and other charges described in the Agreement do not include taxes. Customer will pay any sales, value-added or other similar taxes imposed by applicable law based on the Products that Customer ordered, except for taxes based on CGC's income. If CGC is required to pay taxes, Customer shall reimburse CGC for such amounts. If Customer is required by law to make any tax withholding from amounts paid or payable to CGC under the Agreement, (i) the amount paid or payable shall be increased to the extent necessary to ensure that CGC receives a net amount equal to the amount that it would have received had no taxes been withheld and (ii) Customer shall provide proof of such withholding to CGC.

3.4. Non-Refundable Fees. Customer acknowledges and agrees that orders placed by Customer for Products will be non-cancellable and the fees paid are non-refundable unless otherwise expressly stated in the Agreement.

4. INTELLECTUAL PROPERTY RIGHTS

4.1. CGC Ownership. All Intellectual Property Rights in and to the Products, design contributions, related knowledge or processes, and any update, upgrade, modification, enhancement or derivative works of the foregoing, regardless whether or not solely created by CGC or jointly with the Customer, shall belong to, and vest in, CGC or, as applicable, its licensors. All rights not expressly granted to Customer are reserved to CGC or, as applicable, its licensors.

4.2. Rights to Customer Content. Customer retains all right, title, and interest in and to the Customer Content. During the Term, Customer hereby grants to CGC and its Affiliates a global, royalty-free, irrevocable, sub-licensable, non-exclusive license to use, copy, distribute, modify, display, and perform the Customer Content as necessary for CGC to perform its obligations under the Agreement and to provide the Products.

4.3. Non-Assertion of Rights. Customer covenants, on behalf of itself and its successors and assigns, not to assert against CGC, its Affiliates or licensors, any rights, or any claims of any rights, in any Products and

Documentation, and Customer hereby voluntarily waives any right to demand from CGC, its Affiliates or licensors any rights to any Products and Documentation, except the rights which are expressly granted to Customer under the Agreement.

4.4. Suggestions and Residual Knowledge. CGC shall have all right, title and interest, including, without limitation, all Intellectual Property Rights, in and to, and the unrestricted royalty-free right to use and incorporate into the Products, any suggestions, enhancement requests, recommendations or other feedback provided by Customer, relating to the Products. Furthermore, Customer acknowledges and agrees that CGC is free to use its general knowledge, skills and experience, and any ideas, concepts, know-how and techniques, related to or derived from the performance of the Agreement.

5. CONFIDENTIALITY

5.1. Confidential Information. From time to time, either Party (the "**Disclosing Party**") may disclose or make available to the other Party (the "**Receiving Party**"), whether orally or in physical form, confidential or proprietary information of or in the possession of the Disclosing Party (including confidential or proprietary information of a third party that is in the possession of the Disclosing Party) in connection with the Agreement. The term "**Confidential Information**" means any and all information in any form that Disclosing Party provides to Receiving Party in the course of the Agreement and that either (i) has been marked as confidential; or (ii) is of such nature that a reasonable person would consider confidential under like circumstances. For the avoidance of doubt, Confidential Information includes any Products and any information pertaining to such Products (including, but not limited to, any user manuals, mathematical techniques, correlations, concepts, designs, specifications, listings, and other Documentation, whether or not embedded on a device or another form of media). Notwithstanding the foregoing, Confidential Information shall not include any information, however designated, which the Receiving Party can show (a) is or has become generally available to the public without breach of the Agreement by the Receiving Party, (b) became known to the Receiving Party prior to disclosure to the Receiving Party by the Disclosing Party, (c) was received from a third party without breach of any nondisclosure obligations to the Disclosing Party or otherwise in violation of the Disclosing Party's rights, or (d) was developed by the Receiving Party independently of any Confidential Information received from the Disclosing Party.

5.2. Confidentiality Obligations. Each Party or third party whose Confidential Information has been disclosed retains ownership of its Confidential Information. Each Party agrees to (i) protect the Confidential Information received from the Disclosing Party in the same manner as it protects the confidentiality of its own proprietary and confidential materials but in no event with less than reasonable care; and (ii) use the Confidential Information received from the Disclosing Party solely for the purpose of the Agreement. Upon termination of the Agreement or upon written request submitted by the Disclosing Party, whichever comes first, the Receiving Party shall return or destroy, at the Disclosing Party's choice, all of the Disclosing Party's Confidential Information. Notwithstanding the foregoing, CGC shall not be required to return or destroy any such Confidential Information if such return or destruction is impracticable or technically infeasible. Except with respect to its Affiliates, employees, contractors, or agents who need to know Confidential Information in order to support the performance of such Party's obligations related to the Agreement, and who are contractually bound by confidentiality obligations that are at least as protective as those contained in the Agreement, neither Party shall, disclose to any person any Confidential Information received from the Disclosing Party without the Disclosing Party's prior written consent. The Receiving Party will be responsible for any breach of this Section 5 (Confidentiality) by its Affiliates, employees, contractors, and agents and any third party to whom it discloses Confidential Information in accordance with this Section 5 (Confidentiality). For Confidential Information that does not constitute a "trade secret" under applicable law, these confidentiality obligations will expire three (3) years after the termination or expiration of the Agreement. For Confidential Information that constitutes a "trade secret" under applicable law, these confidentiality obligations will continue until such information ceases to constitute a "trade secret" under such applicable law. However, the Receiving Party may disclose Confidential Information pursuant to an order of a court or governmental agency, provided, that, if permitted by applicable law, the Receiving Party shall first notify the Disclosing Party of such order and afford the Disclosing Party the opportunity to seek a protective order relating to such disclosure. Notwithstanding anything to the contrary contained in this Agreement, Customer authorizes CGC to collect, use, disclose, and modify in perpetuity information or data (including, but not limited to, general usage information and measurements) that is provided by Customer in connection with the use or receipt of the Products (or

generated or created in the course of CGC providing the Products) for the purposes of developing, improving, optimizing, and delivering Products; provided, however, that any disclosure of such data shall only include information or data that CGC develops or derives from such collected data or information (but such disclosure will not include the actual underlying Confidential Information of Customer).

5.3. Press Releases and Client List Reference. Neither Party shall issue any press release concerning the other Party's work without the other Party's consent. Notwithstanding the foregoing, CGC may identify Customer as a client of CGC and use Customer's name and logo and release an announcement regarding the award of the Agreement and CGC is hereby granted a license for the term of the Agreement to use Customer's name and logo for this purpose from time to time as needed. CGC may generally describe the nature of the work in CGC's promotional materials, presentations, case studies, qualification statements, and proposals to current and prospective clients.

6. DATA PROTECTION

6.1. Customer Content. Customer is responsible for the Customer Content and entering it into the Products. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Content, and for obtaining all rights related to Customer Content required in connection with the performance, receipt or use of the Products. Customer will collect and maintain all personal data contained in the Customer Content in compliance with applicable data privacy and protection laws (including GDPR) and the Data Processing Addendum (if applicable).

6.2. Security. Customer will maintain reasonable security standards for the use of the Products by users. Customer is solely responsible for determining the suitability of the Products for Customer's business processes and for complying with all applicable legal requirements regarding Customer Content and its use of the Products. Customer will provide reasonable assistance required in connection with the provision of the Products and the support by CGC. Customer acknowledges and agrees that Customer's reasonable assistance is a necessary precondition for CGC's correct performance of its obligations under the Agreement. Customer bears all consequences and costs resulting from breach of its duties.

7. DISCLAIMER OF WARRANTIES

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THE AGREEMENT, CGC AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, REPRESENTATIONS, OR STATEMENTS, WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CGC, ITS DEALERS, DISTRIBUTORS OR AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES SET FORTH IN THE AGREEMENT AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. CGC DOES NOT WARRANT THAT THE PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE PRODUCTS WILL OPERATE IN COMBINATIONS OTHER THAN AS SPECIFIED IN CGC'S DOCUMENTATION (AS APPLICABLE), THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE PRODUCTS WILL PROTECT AGAINST ALL POSSIBLE SECURITY THREATS, INTERNET THREATS OR OTHER THREATS OR INTERRUPTIONS. THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND MAY BE SUBJECT TO TRANSMISSION ERRORS, DELIVERY FAILURES, DELAYS AND OTHER LIMITATIONS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS.

8. LIMITATION OF LIABILITY

8.1. CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL CGC BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, PUNITIVE OR SIMILAR DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, PROFITS, REVENUE, LOSS, CORRUPTION OR DESTRUCTION OF DATA, BUSINESS INTERRUPTION, OR DOWNTIME), REGARDLESS OF THE CAUSE OF ACTION OR BASIS OF LIABILITY (WHETHER IN CONTRACT, TORT, INDEMNITY, OR OTHERWISE), AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2. Damages Cap. The aggregate liability of CGC to Customer for any loss or damage arising under or in relation to the Agreement, regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty or claims by third parties arising from any breach of the Agreement) shall not exceed the fees paid by Customer pursuant to the applicable Transaction Document for the specific Product giving rise to such liability in the twelve (12) month period preceding the date of the incident giving rise to the claim. The provisions of this

Section 8 allocate the risks between CGC and Customer, and CGC's pricing reflects this allocation of risk and the limitation of liability specified herein. Notwithstanding the foregoing, the limitations on amounts of damages set forth in this Section 8.2 shall not apply to CGC's intentional misconduct, fraud, or fraudulent misrepresentation, or to the extent prohibited by applicable law.

9. INDEMNIFICATION

9.1. <u>Indemnification by CGC</u>. CGC shall defend, indemnify, and hold harmless Customer against claims brought against Customer by any third party alleging that Customer's use of the Products, in accordance with the terms and conditions of the Agreement, constitutes an infringement or misappropriation of a patent, copyright, or trade secret of a third party. CGC will pay damages finally awarded to the third party (or the amount of any settlement CGC enters into) with respect to such claims. This obligation of CGC shall not apply if the alleged infringement or misappropriation results from: (a) use of the Products in conjunction or combination with any other software, services, or any product, data, item, or apparatus that CGC did not provide (including any Third-Party Products); (b) anything Customer provides or designs including configurations, instructions, or specifications (including any Products that were provided pursuant to Customer's designs, drawings, or specifications); (c) a modification of a Product other than with CGC's prior written consent; (d) Customer's failure to use the latest release or version of a Product (including any corrections or enhancements) where such use would have prevented the infringement or misappropriation claim; or (e) any use, storage, distribution, reproduction, or maintenance not permitted by the Agreement. If CGC believes, in its reasonable opinion, that a claim under this Section 9.1 could or is likely to be made, CGC may cease to offer or deliver such Products without being in breach of the Agreement.

9.2. <u>Infringement Remedies</u>. In the event a claim under Section 9.1 is made and such Product is held to infringe or misappropriate a third-party's patent, copyright, or trade secret, then CGC may, at its sole option and expense: (a) procure for Customer the right to continue using the Product under the terms of the Agreement or (b) replace or modify the Product to be non-infringing without a material decrease in functionality. If these options are not reasonably available, CGC or Customer may terminate the Agreement upon written notice to the other and Customer shall immediately cease using or shall return the infringing Product. The provisions of this Section 9.2 state the sole, exclusive, and entire liability of CGC to Customer, and is Customer's sole remedy, with respect to third-party claims covered by Section 9.1.

9.3. <u>Indemnification by Customer</u>. Customer shall defend, indemnify, and hold harmless CGC and its Affiliates (and each of their licensors) and each of their respective officers, directors, contractors, agents, and employees (**"CGC Indemnitees"**) against claims brought against CGC Indemnitees by any third party arising from or related to: (a) any use of the Products by Customer in violation of the Agreement or any applicable law or regulation; (b) any Customer Content; and (c) an allegation that the Customer Content or other material provided by Customer, or use of the Products by Customer in violation of the Agreement or applicable law or regulation, violates, infringes, or misappropriates the Intellectual Property Rights of a third party. The foregoing shall apply regardless of whether such damage is caused by the conduct of Customer and/or its named users or by the conduct of a third-party using Customer's access credentials.

9.4. <u>Indemnification Requirements</u>. The indemnification obligations under this Section 9 are conditioned on: (a) the Party against whom a third-party claim is brought timely notifying the other Party in writing of any such claim, provided however that a Party's failure to provide or delay in providing such notice shall not relieve a Party of its obligations under this Section 9 except to the extent such failure or delay prejudices the defense; (b) the Party who is obligated to defend a claim having the right to fully control the defense of such claim; (c) the Party against whom a third-party claim is brought reasonably cooperating in the defense of such claim; and (d) Customer complying with CGC's direction to cease any use of the Products which in CGC's reasonable opinion, is likely to constitute an infringement or misappropriation. Any settlement of any claim shall not include a financial or specific performance obligation on or admission of liability by the Party against whom the claim is brought, provided however that CGC may settle any claim on a basis requiring CGC to substitute for the Products any alternative substantially equivalent non-infringing products. CGC shall not be responsible for any settlement made without its consent. The Party against whom a third-party claim is brought may appear, at its own expense, through counsel reasonably acceptable to the Party obligated to defend claims. Neither Party shall undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation that is prejudicial to the other Party's rights.

10. TERM AND TERMINATION

10.1. Term of GTCs. The initial term of these GTCs begins on the Effective Date and shall continue thereafter for five (5) years unless terminated earlier by a Party pursuant to these GTCs (including, but not limited to, this Section 10 (Term and Termination)) (the "**Initial Term**"). The GTCs will auto-renew for one (1) year periods following the Initial Term (each, a "**Renewal Term**") until either Party provides notice of intention to not renew sixty (60) days before the end of the then current Initial Term or Renewal Term. The Initial Term and each Renewal Term shall collectively be referred to as the "**Term**".

10.2. Transaction Document Term. The initial term of each Transaction Document shall commence on the effective date specified in the Transaction Document (the "**TD Effective Date**") and continue thereafter until: (a) the end of the term of the Transaction Document as specified in the Transaction Document; (b) if specified in the Transaction Document, delivery of the Products in accordance with the Transaction Document; or (c) earlier termination by either Party in accordance with this Section 10 (Term and Termination) (the "**TD Term**").

10.3. Evaluation Term. If Customer is using the Product on an evaluation basis or as a free trial, then the term for such Product will be specified in the Transaction Document. If no such term is specified, the term shall be fourteen (14) days from the date the Product is delivered.

10.4. Termination for Material Breach. Either Party may terminate these GTCs or a Transaction Document for cause if the other Party commits a material breach of this Agreement or Transaction Document (including, without limitation, a delay in Customer's payment of any money due under this Agreement or any Transaction Document) and fails to cure such breach within thirty (30) days (or with respect to Customer's payment failure, within ten (10) days) of receipt of a notice of default from the non-defaulting Party.

10.5. Termination for Financial Deterioration. Either Party may terminate this Agreement or a Transaction Document immediately if the other Party files for bankruptcy, ceases or threatens to cease carrying on business, becomes insolvent, or makes an appointment, assignment or novation for the benefit of creditors.

10.6. Effect of Termination. If these GTCs are terminated prior to the completion of one (1) or more Transaction Documents, then the Transaction Documents that are not terminated shall continue to be governed by the GTCs for the remainder of the applicable TD Term.

11. INSURANCE

For as long as any Transaction Document remains in effect, CGC will maintain, at its sole cost and expense, comprehensive general liability and property damage insurance in an amount not less than 1 million EURO in the aggregate. Additionally, CGC will maintain, at its sole cost and expense, workers' compensation insurance in accordance with statutory requirements.

12. THIRD-PARTY PRODUCTS

12.1. Third-Party Products. Unless otherwise agreed in writing by CGC, if Third-Party Products are supplied by CGC to Customer, such Third-Party Products are provided on a "pass-through" basis only and are subject to the terms and conditions of the third-party vendor, including but not limited to warranties, licenses, indemnities, limitation of liability, prices and changes thereto.

13. TRAINING

CGC provides its standard training, e-training for Products. Any fees required for such training will be set forth in the applicable Transaction Document.

14. MISCELLANEOUS

14.1. Assignment. The Agreement shall extend to and be binding upon the Parties to the Agreement, their successors, and assigns, provided, however, that neither Party shall assign or transfer the Agreement (including any Transaction Document) without the other Party's prior written consent, which shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing limitation, CGC may assign or transfer the Agreement, in whole or in part, without obtaining the consent of Customer, to a parent company or subsidiary or in connection with the transfer or sale of its entire business or in the event of a merger, divestiture, internal reorganization or consolidation with another company.

14.2. Independent Contractor. CGC is an independent contractor, and each Party agrees that no partnership, joint venture, agency, fiduciary, or employment relationship exists between the Parties.

14.3. Force Majeure. Except for Customer's payment obligations, neither Party shall be liable for delays caused by conditions beyond their reasonable control, ("**Force Majeure**"), provided notice thereof is given to the other Party as soon as practicable. All such Force Majeure conditions preventing performance shall entitle the Party hindered in the performance of its obligations under the Agreement to an extension of the date of delivery of

the Products by a period of time equal to the period of delay incurred as a result of the Force Majeure or to any other period as the Parties may agree in writing.

14.4. Waiver. The waiver (whether express or implied) by either Party of a breach or default of any of the provisions of the Agreement (including any Transaction Document) by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

14.5. Notices. All notices and other communications required or permitted under the Agreement will be in writing and delivered by confirmed transmission, by courier or overnight delivery service with written verification of receipt, or by registered or certified mail, return receipt requested, postage prepaid, and in each instance will be deemed given upon receipt. All such notices, approvals, consents and other communications will be sent to the addresses set forth on the Transaction Document or to such other address as may be specified in writing by either Party to the other in accordance with this Section 14.5.

14.6. Invalidity and Severability. If any provision of the Agreement (including any Transaction Document) shall be found by any court to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of the Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal, and commercial objectives of the invalid or unenforceable provision.

14.7. Negotiated Terms. The Parties agree that the terms and conditions of the Agreement are the result of negotiations between the Parties and that the Agreement shall not be construed in favor of or against either Party by reason of the extent to which such Party or its professional advisors participated in the preparation of the Agreement.

14.8. Survival of Provisions. The provisions of the Agreement that by their nature survive expiration or termination of the Agreement will survive expiration or termination of the Agreement, including, but not limited to, the following Sections: 3 (Payments and Invoicing), 4 (Intellectual Property Rights), 5 (Confidentiality), 7 (Disclaimer of Warranties), 8 (Limitation of Liability), 9.2 (Indemnification by Customer), 10 (Term and Termination), 12 (Third-Party Products), and 14 (Miscellaneous).

14.9. Governing Law and Jurisdiction. The validity of the Agreement and the rights, obligations and relations of the Parties under the Agreement and in any dispute between them will be construed and determined under and in accordance with the substantive laws of Germany, without regard to such state's principles of conflicts of law. If a court must enter or enforce an arbitration award or the binding arbitration provision set forth in Section 14.12 (Binding Arbitration) is deemed invalid or ineffective, then each Party irrevocably agrees to submit to the exclusive jurisdiction of (and waives any objection to the venue of) the federal or state courts located in Berlin, Germany to enter or enforce such award or to determine such claim or matter arising out of or in connection with this Agreement, as applicable. To the extent otherwise applicable, the Parties hereto agree that the United Nations Convention on the International Sale of Goods will not apply to this Agreement.

14.10. Export Restrictions. Customer agrees to comply fully with all applicable international and national export laws, regulations, orders, decrees, and lists (collectively, "**Export Control Laws**"), including, but not limited to, the U.S. Export Administration Regulations, the Office of Foreign Asset Control Regulations, and the EU Dual-Use Regulation 428/2009 (each as amended, updated, supplemented, or otherwise modified from time to time), as well as all applicable end-use and destination restrictions issued by the U.S., foreign governments, and supranational bodies to assure that no Product (or any product thereof) is (i) exported, directly or indirectly, in violation of any Export Control Laws or (ii) is intended to be used for any purpose prohibited by Export Control Laws. For the avoidance of doubt, Customer agrees that no data, information, or materials resulting from any Product will be exported, directly or indirectly, in violation of any applicable Export Control Laws.

14.11. Sanctions. Customer will comply with all UN, EU, US, UK and any other applicable jurisdiction's trade and economic sanctions laws, regulations, embargoes, or similar restrictive measures ("**Sanctions Laws**"). Customer will ensure that it and any distributors appointed by the Customer will not resell any (or incorporate any Product in other products or services to be sold) to persons or entities (i) in violation of Sanctions Laws, (ii) added to US Treasury Department's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (the "**OFAC SDN List**") or (iii) added to the EU Consolidated List or any other applicable sanctions list, including the UK's Consolidated List of Financial Sanctions Targets, each as amended, updated or

restated from time to time. Furthermore, no member, employee, director or officer of Customer or, as far as Customer is aware, any person acting on its behalf, is in violation of Sanctions Laws or designated on a UN, EU, US, UK or other applicable sanctions list (a "Restricted Person") or controlled (directly or indirectly) by a Restricted Person.

14.12. Binding Arbitration. Any controversy or claim arising out of or relating to the Agreement, including any breach of the Agreement, shall be determined by final and binding arbitration administered by JAMS under its Streamlined Arbitration Rules and Procedures ("**Streamlined Rules**"). The award rendered by the arbitrator shall be final, non-reviewable, and non-appealable and binding on the Parties and may be entered and enforced in any court having jurisdiction. There shall be one arbitrator agreed to by the Parties within twenty (20) days of receipt by the respondent of the request for arbitration or in default thereof appointed by JAMS in accordance with the Streamlined Rules, which arbitrator shall have substantial experience in resolving business disputes involving similar products or services. The place of arbitration shall be Berlin, Germany. The arbitrator will have no authority to award punitive, consequential, liquidated, or other damages waived, disclaimed, or otherwise prohibited by the Agreement and the award shall not exceed the applicable limitation of liability set forth in the Agreement. Neither Party has the right to act as a class representative or participate as a member of a class with respect to any arbitrated controversy or claim arising out of or relating to the Agreement (including any breach of the Agreement).

14.13. Waiver of Jury Trial. Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any proceedings relating to the Agreement or any performance or failure to perform of any obligation under the Agreement.

14.14. Waiver of Right to Class Action. Each Party waives, to the fullest extent permitted by applicable law, any right it may have to participate in a class action in respect of any proceedings relating to the Agreement or any performance or failure to perform of any obligation under the Agreement. Each Party may only bring a claim against the other in an individual capacity and not as a plaintiff or class member in any purported class or representative proceeding.

14.15. Ethical Trading Policy. Customer shall comply with CGC's then-current ethical trading policy located at www.simulate365.com, which shall be incorporated herein by reference.

14.16. Third-Party Beneficiary. Except as expressly set forth in the Agreement, the Parties do not intend to create rights for any person as a third-party beneficiary of the Agreement.

14.17. Entire Agreement; Amendments; Execution. The Agreement constitutes the entire agreement between the Parties relating to its subject matter and supersedes all prior or contemporaneous representations, understandings, or agreements whether written or oral, relating to its subject matter. The Agreement will prevail over any additional, conflicting, or inconsistent terms and conditions that may be contained in any purchase order or other document furnished by Customer to CGC. The Agreement may be amended or modified only by a writing that is signed by or on behalf of both Parties. The Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. An executed facsimile or electronic copy of the Agreement shall be construed as if it were an original.

CAPITAL GAIN CONSULTANTS

CLOUD SERVICES ADDENDUM

This Cloud Services Addendum (the "Cloud Services Addendum") supplements and is hereby incorporated into and made a part of those certain GTCs by and between CGC and Customer, to which this Cloud Services Addendum is included. Capitalized terms used in this Cloud Services Addendum without definition shall have the same meanings ascribed to them in the GTCs.

1. DEFINITIONS

1.1 "**Acceptable Use Policy**" means the then-current acceptable use policy of CGC, which is currently located at www.simulate365.com, as may be updated, modified, supplemented, or otherwise amended from time to time.

1.2 "**Account Administrator**" means the Representative(s) set out in the Transaction Document, which, in the management of the Product, has the exclusive right to grant access or use to any Users of the Product on behalf of Customer.

1.3 "**Account Information**" means any information about Customer, its Affiliates, and any Users which Customer or any User provides to CGC in connection with the creation or administration of their accounts (including, but not limited to, any Usage Credentials or Usage Metrics).

1.4 "**Simulate365**" shall mean: CGC's platform for managing user subscriptions, accessing the Simulate365 Dashboard, and accessing the Hosting Services, and accessing CGC's websites simulate365.com, cc-api.com, and process-simulation-cup.com for user communication (marketing, sales, and support).

1.5 "**Best-fit Storage**" means an algorithm that may be used together with the Data Acquisition Rate. Best-fit Storage combined with a Data Acquisition Rate of sixty (60) seconds means that regardless of the number of values submitted for a Data Point, only the minimum set of values required to give a good representation of the Data Point for that sixty (60) seconds are stored. The minimum set of values may include, but is not limited to the First, Last, Minimum, Maximum, and Mean value for the Data Point. Best-fit Storage may be set forth in a Transaction Document as applicable to the Product purchased.

1.6 "**Billing Metrics**" means any information collected, processed, or stored by or on behalf of CGC for the purposes of computing fees for a Product.

1.7 "**Credits**" means electronic credits purchased by Customer which are then redeemed against Customer's chosen Product allowing access to such Product for the Credit Access Period.

1.8 "**Credit Access Period**" means a period defined in the Transaction Document during which a User may access multiple instances of the Product from multiple devices, and it will count as a single access for the purpose of Credit Charging. Each Credit Access Period consumes the number of Credits shown against the Services in the Subscription Table. Where Customer wishes the Services to be used by multiple Users, the same applies per additional User.

1.9 "**Credit Weighting**" The number of Credits required for a single User to utilize a Product during a Credit Access Period.

1.10 "**Customer Submission**" means any software, data (including Personal Data), information, text, image, audio, video, photograph, or other content or material, in any format, that Customer or a User posts, uploads, or otherwise submits (or is posted, uploaded, or submitted on Customer's or a User's behalf) to community opened areas or developer or blog forums.

1.11 "D**aily Active Users**" or "**DAU**" refers to the total number of Users that have been identified by CGC as accessing the Product during a calendar day, as measured in Coordinated Universal Time (UTC).

1.12 "**Data Acquisition Rate**" means the fastest rate at which the Product will store values for a single Data Point. This is expressed in terms of the duration between successive values stored by the Product. Values submitted that exceed the Data Acquisition Rate may not be stored by the Product. Data Acquisition Rates may be set forth in a Transaction Document as applicable to the Product purchased.

1.13 "**Data Point**" means a discrete unit of information – usually representing a value from a sensor or other device - that is being monitored over time, and published and/or stored by the Product. Data Points may be set forth in a Transaction Document as applicable to the Product purchased.

1.14 "**Data Source**" means a piece of equipment or other system that is providing one or more Data Points to the Product and is being represented and managed as an inbound connection to the Product. Data Sources may be set forth in a Transaction Document as applicable to the Product purchased.

1.15 "**Documentation**" means the technical documentation, program specifications, operations manuals, and other documentation as are available on the Product (or through Simulate365 for such Product), which may be updated, modified, supplemented, or otherwise amended by CGC from time to time.

1.16 "**Excess Usage**" has the meaning set forth in Section 4.2(e).

1.17 "**Goods**" means all products, equipment, materials, spare parts, hardware, supplies, and accessories for which support has been purchased under the applicable Transaction Document.

1.18 "**High Risk Use**" has the meaning set forth in Section 10.

1.19 "**Monthly Active Users**" or "**MAU**" means the total number of Users that have been identified by CGC as accessing the Product during a calendar month, as measured in Coordinated Universal Time (UTC).

1.20 "**Named User**" means a unique, named individual who has logged-in or otherwise accessed the Product. Uniqueness of an individual is determined through a combination of (i) the credentials or other identifying information provided during any login sequence and (ii) the internet address, network address, equipment identifier, International Mobile Equipment Identity or other item that identifies the device being used to access the Product.

1.21 "**Permitted Third Party**" means any third party specifically listed in a Transaction Document and having issued a Permitted Third-Party Undertaking Letter to CGC (if requested by CGC).

1.22 "**Permitted Third-Party Undertaking Letter**" means a letter, commitment, or agreement, in form and substance satisfactory to CGC in its sole discretion, requiring such third party to comply with all terms and conditions contained in the Agreement (and to be responsible for any non-compliance).

1.23 "**Personal Data**" means any information relating to an identified or identifiable natural person. An identifiable natural person" is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person).

1.24 "**Privacy Policy**" means the then-current privacy policy of CGC, which is currently located at www.simulate365.com, as may be updated, modified, supplemented, or otherwise amended from time to time.

1.25 "**Representatives**" means any employees, officers, representatives, or advisers of a Party.

1.26 "**Service Level**" means any service level for a Product that is set forth in a Schedule for such Product.

1.27 "**Third-Party Content**" means (i) all data and information submitted to CGC by or on behalf of Customer, (ii) obtained, developed or produced in connection with the provision, receipt or use of the Product, or (iii) to which CGC has access in connection with the provision of the Product.

1.28 "**Top-Up Credits**" additional Credits purchased by Customer at any time other than on a renewal term.

1.29 "**Usage Metrics**" means any information or data that is reasonably necessary to understand, aggregate, compute, measure, or support Customer's use of the Products.

1.30 "**User Credentials**" means the username and password of each User as provided by CGC to use the applicable Product.

1.31 "**User**" has the meaning set forth in Section 3.1.

2. TRANSACTION DOCUMENTS

2.1. From time to time, CGC and Customer may enter into Transaction Documents whereby CGC provides Products to Customer. Each Transaction Document shall constitute a contract between CGC and Customer separate and distinct from any other Transaction Document. Each Transaction Document shall be deemed to incorporate the terms of the GTCs (whether or not stated on the face of the Transaction Document).

3. USE OF PRODUCTS

3.1. Use of Products. During the TD Term and subject to Customer's compliance with all terms and conditions of the Agreement (including payment of any applicable fees), CGC grants to Customer a personal, non-exclusive, non-transferable limited right to access and use the Products and Documentation, through Simulate365, solely for the internal business operations of Customer and subject to any usage restrictions set forth for such Product in the Agreement (including any Transaction Documents or applicable Schedule). Customer shall not make such Product accessible or available for use by Affiliates or Permitted Third Parties unless expressly permitted in the Transaction Document; provided, however, that Customer will always be liable for any acts or omissions of Users, Affiliates, and Permitted Third Parties (including for any non-compliance with terms of the Agreement). Customer may allow Account Administrator, employees, contractors, and agents authorized by

Customer, as applicable, to use the Products on Customer's behalf in accordance with the Agreement and the Transaction Document (the "Users"). For a Product that is specifically designed to allow Customer's clients, agents, customers, suppliers or other third parties to access the Product in order to interact with Customer, such third parties will be considered "Users" subject to the terms of the Agreement and the Transaction Document. Customer shall cause the Users to comply with the Agreement and shall be responsible for the acts and omissions of the Users. Following the expiration or termination of the TD Term, Customer shall not be able to access or use the Product or Documentation. Notwithstanding the foregoing, CGC recognizes and agrees that certain users of the Products may be OEM customers of CGC (an "OEM Customer"). In such instance, CGC understands that such OEM Customer may make the Product available to the OEM Customer's third-party customers. CGC consents to such use of the Product by the OEM Customer provided the OEM Customer abides by CGC's separate conditions and procedures relating to operating as an OEM Customer of CGC.

3.2. Restrictions on Use.

3.2.1 Copy Restrictions. Copyright laws and international treaties protect the Product, including the Documentation. Unauthorized copying of the Product, the Documentation, or any part thereof, is expressly prohibited. All titles, trademarks, and copyright and restricted rights notices will be reproduced in such copies.

3.2.2 Use Restrictions. The Agreement only gives Customer some rights to use and access the Product and CGC and its licensors reserve all other rights. Customer does not acquire any rights, express or implied, other than those expressly granted in the Agreement. Unless applicable law gives Customer more rights despite this limitation, Customer may use the Product only as expressly permitted in the Agreement. In doing so, Customer agrees that it will comply with any technical limitations in the Product that only allow Customer to use the Product in certain ways. Customer agrees that it will not, nor will Customer permit others to:

(a) reverse engineer, reproduce, decompile, recompile, disassemble, merge, modify, adapt or translate the Product or any component thereof (including Documentation), or create derivative works based on the Product (including Documentation), except and only to the extent that (a) applicable law expressly permits, despite this limitation, (b) CGC gives it prior written consent, or (c) the Documentation accompanying the Product expressly permits;

(b) incorporate the Product into any other software program or software-as-a-service product not provided by CGC, except (a) for incorporation of such Product with application program interfaces that CGC makes publicly available for such Product or (b) to the extent permitted to customize the Product in accordance with the accompanying Documentation;

(c) remove, obliterate, destroy, minimize, block or modify any logos, trademarks, copyright, digital watermarks, or other notices of CGC or its licensors that are included in the Product, except as may be permitted when using application program interfaces that CGC makes publicly available for such Product;

(d) work around any technical limitations in the Product;

(e) make more copies of the Product than as allowed in the Agreement or by applicable law, despite this limitation;

(f) publish (or otherwise make available) the Product, including any application programming interfaces included in the Product, or any programs or materials resulting from the Product (excluding Customer Content);

(g) transfer, sublicense, rent, lease, sell, lend, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, make available, or assign the Product or any part thereof (including any materials or programs, such as underlying software programs) to any other person or entity (except as expressly permitted by the Agreement);

(h) transfer the Product to another location or to other equipment without the prior written consent of CGC (except as otherwise expressly permitted pursuant to the Agreement);

(i) use the Product to store or transmit infringing, libelous, or otherwise unlawful or tortious material (or to store or transmit material in violation of law or third-party privacy rights);

(j) use the Product in a way intended to access or use the underlying infrastructure or to avoid incurring fees or exceed usage limitations;

(k) perform or disclose any of the following security testing of the Product or associated infrastructure without CGC's prior written consent: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing;

(l) use or access the Product in a manner not permitted by (or otherwise inconsistent with) the Documentation; or

(m) use the Product to build or support, directly or indirectly, products or services competitive to the Product or any other products or services of CGC.

3.3. Acceptable Use Policy. Customer shall comply with the Acceptable Use Policy and shall not use or permit the use of the Product in a manner that violates the Acceptable Use Policy, which is incorporated herein by reference.

3.4. Customer Submissions. Any Customer Submissions will be governed by the terms of the Apache License Version 2.0, unless Customer requests and CGC consents in writing to another license supported by CGC.

4. PROVISION OF PRODUCTS

4.1. Provision of Product. CGC will provide the Products through Simulate365 substantially in accordance with the Agreement.

4.2. Subscription Models. CGC may offer to Customer various subscription models for the Product. The terms and conditions relating to the applicable subscription models are as follows:

(a) Named User Model. If the Product has been subscribed to on a Named User Model basis, then Customer's access to and use of the Product shall be limited to the number of (and specified) Named Users set forth in the Transaction Document.

(b) Monthly Active User Model. If the Product has been subscribed to on a Monthly Active User Model basis, then during any calendar month (as measured in Coordinated Universal Time (UTC), Customer's access to and use of the Product shall be limited to and not exceed the number of Monthly Active Users set forth in the Transaction Document..

(c) Daily Active User Model. If the Product has been subscribed to on a Daily Active User Model basis, then during any calendar day (as measured in Coordinated Universal Time (UTC)), Customer's access to and use of the Product shall be limited to and not exceed the number of Daily Active Users set forth in the Transaction Document..

(d) Hourly Usage Model. If the Product has been subscribed to on an Hourly Usage Model basis, then Customer's access to and use of the Product shall be limited to and shall not exceed the number of hours set forth in the Transaction Document.

(e) Credit Based Subscription Model. If the Product has been subscribed to on a Credit Based Subscription Model basis, then then Customer's access to and use of the Product shall be limited to and shall not exceed the number of Credits set forth in the Transaction Document. Customer will purchase Credits at the start of the initial term and on each renewal term. The Customer's rights to use such Credits will expire on the initial term and any renewal term on which the Credits were purchased. Where Customer purchases Top-up Credits, such Top-up Credits will be purchased at the agreed rate and will expire at the end of the initial term or renewal term, as applicable. CGC may, but is not required to efforts to send notifications to the Account Administrator in connection with the following events:

- One month before Customer's projected usage will have consumed all remaining Credits.
- One week before Customer's projected usage will have consumed all remaining Credits.
- When all credits have been consumed.

Where the Customer's use of the Product exceeds the number of Credits or Top-Up Credits purchased ("**Excess Usage**"), CGC reserves the right to deny access to such Product. CGC reserves the right to charge Customer for Excess Usage at a rate equal to 40% of the applicable fees for such Product.

4.3. Hosting. Unless a specific hosting region is specified in an applicable Transaction Document for a Product, CGC shall host and provide the Product from such center(s) and location(s) as CGC may determine (including as may be necessary for any redundancy or backup purposes).

4.4. Disclaimer of Third-Party Products. The Product may enable Customer to access, use, or purchase Third-Party Products (including through external websites). Any access, use, or purchase of the Third-Party Products (including, but not limited to, any content, data, information, pictures, or other materials available or provided through such Third-Party Products) will be solely at Customer's own risk and CGC disclaims all liability or obligation relating to such Third-Party Products (including any content, data, information, pictures, or other materials offered or available through such Third-Party Products). Any contract entered into, and any transactions completed, via a Third-Party Product is between Customer and the relevant third party, not CGC.

4.5. Modifications or Discontinuance of Content. At any time, CGC may modify or discontinue any of the following that is made available or accessible through a Product (other than Customer Content, unless such Customer Content violates the Agreement): software, machine images, data (including, but not limited to,

engineering data, models, samples, libraries, and standards), information, text, audio, video, images, or other content or material contained in the Product, Documentation, application programming interfaces, sample code, software, libraries, command line tools, proofs of concept, templates, and other related technology.

4.6. Modifications or Discontinuance of Products. At any time, CGC may modify or update the features, specifications, or functionality of, or discontinue, any Product and any Documentation, in whole or in part.

4.7. Collection of Usage and Billing Metrics. CGC and its licensors may collect, and process Usage Metrics, Billing Metrics and other information relating to the provision or use of the Products (i) for CGC's own internal purposes, (ii) in order to ensure Customer's compliance with the Agreement and (iii) to prevent fraud.

5. SECURITY MEASURES AND DATA PRIVACY

5.1. Security Measures. CGC will implement commercially reasonable measures to secure and protect the Products, including against accidental or unlawful loss, access, or disclosure. However, CGC accepts no liability for any security breaches, including, without limitation, security breaches resulting from computer hackers, unlawful entry, unauthorized access, or theft.

5.2. Usage of Personal Data. Notwithstanding any prohibition on the uploading of Personal Data contained in Section 6.4, Customer acknowledges and agrees that CGC may use Personal Data (including any Account Information) in accordance with CGC's then-current Privacy Policy and each Party shall comply with the Data Processing Addendum. Except as requested by CGC to set up User Credentials, Customer shall not upload any Personal Data as Customer Content.

5.3. Customer Security Requirements. Customer acknowledges and agrees that Customer has reviewed the security features and responsibilities as described in the Agreement (including the applicable Documentation) and has determined that such features and responsibilities meet Customer's needs. Customer is solely responsible for determining the appropriate procedures and controls regarding security of the Customer Content and for the implementation of any such procedures and controls. If the current security, procedures, and controls offered by CGC with respect to the Product do not meet Customer's requirements, then Customer should not use the Product.

6. CUSTOMER OBLIGATIONS AND CONTENT

6.1. Customer Content. Customer shall obtain all rights related to Customer Content required in connection with the performance, receipt or use of the Products and hereby grants all necessary rights and permissions to enable CGC, its Affiliates, its subcontractors, and its sub processors to host, use, copy, provide, store, distribute, transmit, process, modify, display, and perform the Customer Content using the Products or to fulfil CGC's obligations under the Agreement, including, without limitation, making necessary disclosures and obtaining all licenses, permits, approvals, or consents required in connection with the personal data or regulated content in the Customer Content. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Content. Without prejudice to the Data Processing Addendum, Customer is responsible for (a) any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer Content, including any viruses, Trojan horses, worms or other harmful programming routines contained in Customer Content, and (b) any use by Customer or Customer's Users of the Products in a manner that is inconsistent with the Agreement. To the extent Customer discloses or transmits Customer Content to a third party, CGC is no longer responsible for the security, integrity, or confidentiality of such content outside of CGC's control.

6.2. Provision of Information. In order to use or access the Product, Customer must provide details as specified by CGC during the registration process for at least one Account Administrator. The Account Administrator can then register User Credentials for Users for their access to the Product. User Credentials are personal, and Customer may not sell, transfer, sublicense, or otherwise assign them to any other person or entity.

6.3. Specific Customer Responsibilities. Customer is solely responsible for Customer's and Users' use of the Products and shall: (a) make all Users aware of the terms of the Agreement; (b) be liable for any fees for Users who the Account Administrator has registered to the Products; (c) not allow any User Credentials to be used by more than one individual User unless it has been reassigned in its entirety to another individual, in which case the prior User shall no longer have any right to use or access the Products; (d) ensure that the use and access of the Products and provision and submission of any Customer Content or Customer Submission does not violate any CGC policy, applicable law, or the Agreement, including the Acceptable Use Policy; (e) provide any reasonably necessary information and cooperation for CGC to provide the Products; (f) be responsible and liable for all activities of Users and for any use of Customer's User Credentials and shall ensure that the User

Credentials are kept confidential and secure (CGC will not be responsible for any unauthorized access through Customer's User Credentials); (g) ensure that Customer Content is compatible with the application programming interfaces; (h) ensure that Customer's network and systems comply with relevant specifications and requirements that may be provided by CGC from time to time; (i) be solely responsible for Customer Submissions, including the accuracy, legality, reliability, integrity, and quality of such Customer Submissions; (j) be solely responsible for procuring and maintaining any systems, network connections, and telecommunications links necessary to access any Products (including any application programming interfaces); and (k) use commercially reasonable efforts to prevent any unauthorized use of or access to the Products (and upon becoming aware of such unauthorized use or access, promptly notify CGC of such use or access).

6.4. No Special or Specific Data. Unless otherwise specified in the applicable Transaction Document or Schedule for a particular Product, Customer Content may not include any sensitive or special data that imposes specific data security, data protection obligations, or governmental regulations on CGC, including, but not limited to: (i) the Health Insurance Portability and Accountability Act of 1996 (HIPAA); (ii) Gramm-Leach-Bliley Act of 1999 (GLB); (iii) all applicable laws and non-governmental standards protecting personal data (including Payment Card Industry Data Security Standard (PCI-DSS) and Payment Application Data Security Standard (PA-DSS)); (iv) all laws concerning the protection, transport, storage, use and processing of data (including the EU General Data Protection Regulation); and (v) all applicable laws similar to those laws listed in subsections (i) through (iv) above.

6.5. Return of Customer Content During TD Term. Without prejudice to the Data Processing Addendum, Customer may request in writing during the TD Term that CGC return to Customer any Customer Content stored on the Product. Following receipt of such request, CGC will (at Customer's expense) use commercially reasonable efforts to return (in CGC's standard format or any other format selected by CGC) such Customer Content within sixty (60) days after receipt of such request.

6.6. Return of Customer Content Following Expiration or Termination. Without prejudice to the Data Processing Addendum, upon Customer's request before the sixtieth (60th) day after the expiration or termination of the applicable Transaction Document, CGC will return (in CGC's standard format or any other format selected by CGC) or remove Customer Content from the Products, except where required to retain such Customer Content in accordance with applicable law. CGC may charge for certain activities performed at Customer's request (such as delivering Customer Content in a specific format). Following the sixtieth (60th) day after the expiration or termination of the applicable Transaction Document, CGC shall have no obligation to continue to hold, export, store, or return Customer Content (and CGC will have no liability for deletion of any Customer Content in accordance with the Agreement).

6.7. Customer Content. The Parties acknowledge and agree that "Customer Content" shall not be deemed to include the Products, the software agents, applications and tools that CGC makes available to Customer for download, the CGC products and services, the CGC Intellectual Property Rights, and any and all derivative works of the foregoing. However, "Customer Content" shall be deemed to include any Third-Party Content that is brought by Customer into the Products by Customer's (or any User's) use of the Products.

6.8. Legal and Regulatory Requirements. Customer acknowledges and agrees that Customer is solely responsible for Customer's compliance with any laws, rules, and regulations. Customer is solely responsible for ensuring that the Product meets any requirements (whether technical, functional, legal, or otherwise) that are necessary for Customer to fulfill its compliance obligations. If the Product does not meet Customer's requirements, then Customer should not use the Product.

6.9. Data Retention System. Customer acknowledges and agrees that the Product is not intended to act as a document or data retention system for Customer. The Product has limited capacity to store Customer's data (including the Customer Content) and Customer must store and backup such data (including the Customer Content) in a separate system. Customer is also responsible for any individual's personal information or any information Customer considers confidential that is included in the Customer Content.

7. SUSPENSION OF PRODUCTS

7.1. Suspension Rights. CGC may immediately suspend Customer's or any User's right to access or use all or any part of a Product upon notice to Customer if, in CGC's reasonable opinion, the use of or access to such Product (i) poses a security risk to CGC or others or impacts the functionality of the Product, (ii) adversely impacts CGC's or its licensor's systems or the Product, (iii) is in breach of applicable laws, (v) adversely impacts the access to or use by CGC's other customers of such Product, or (v) is in breach or violation of the Agreement. If CGC suspends

Customer's or User's right to access or use all or any part of a Product, then CGC will use reasonable efforts to provide advance notice to Customer to the extent practicable.

7.2. Restoration of Product. If CGC suspends any right to access or use the Product in accordance with Section 7.1, then CGC will use commercially reasonable efforts to restore such access or use as soon as practicable after Customer has resolved the problem or incident giving rise to such suspension.

7.3. Material Breach of Agreement. Any incident or problem that would permit CGC to suspend any use or access rights pursuant to Section 7.1 shall be deemed to be a material breach of the Agreement.

8. SERVICE LEVELS

CGC may change or discontinue Service Levels from time to time, but will provide ninety (90) days' prior notice to Customer before any material change to a Service Level.

9. DISCLAIMER

Customer acknowledges and agrees that in no circumstance will CGC be liable for (i) investments, expenditures, or commitments related to the access or use of a Product, (ii) CGC's reliance on any information provided by an individual, entity, or other organization using Customer's account and password (or any User account and password), or (iii) temporary unavailability of all or parts of a Product.

10. HIGH RISK USE

The Product is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted. Unless CGC gives its prior written consent, Customer has no right to use (and must not use) the Product in any application or situation where the failure of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("**High Risk Use**"). High Risk Use does not include utilization of the Product for administrative purposes, to store configuration data, engineering and/or configuration tools, or other applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage.

11. AUDITS AND VERIFICATION

11.1. Record Keeping. During the TD Term and for a period of two (2) years thereafter, Customer shall maintain complete and accurate records documenting the location and use of the Product in a manner sufficient to permit CGC to conduct an audit in accordance with Section 11.2 of this Cloud Services Addendum.

11.2. Audit Right. During the TD Term and for a period of two (2) years thereafter, CGC shall be permitted to audit and shall be permitted to have its designee audit (at least once annually and in accordance with CGC's standard procedures, which may include on-site or remote audits of facilities, systems, records, and personnel) the usage of the Product and Customer's compliance with the Agreement. CGC will conduct any such audit during regular business hours. Customer shall cooperate reasonably in the conduct of such audits. Additionally, CGC may at any time audit Customer's access to or use of the Products through any functionality contained in the Products to verify Customer's compliance with the terms of the Agreement. Any reasonable and actual costs incurred by CGC for such audit shall be paid by Customer if the audit results indicate usage in excess of the permitted quantities or levels, underpayment of any fees, or breach of the Agreement.

11.3. Compliance Certificate. Within thirty (30) days of receipt of CGC's written request, Customer shall provide CGC with a signed certification of compliance with the Product usage conditions; provided, however, that CGC shall not request more than one compliance certificate annually.

12. SUPPORT SERVICES AND MAINTENANCE

CGC will maintain and support the Product in accordance with CGC's then-current maintenance and support policies.

13. SUBCONTRACTORS AND DATA CENTERS

Customer understands and agrees that CGC, its Affiliates, and its subcontractors may perform certain aspects of the Product, such as (but not limited to) service administration, hosting, support, and/or disaster recovery, from data centers and other facilities located throughout the world. As such, Customer acknowledges and agrees that use of the Product may result in the Customer's data (including, but not limited to, any Customer Content) being collected, transferred, processed, and/or used in any area of the world. CGC reserves the right to contract with third-party subcontractors to provide all or part of the Product on behalf of CGC and CGC may change or replace such subcontractors at any time in its sole discretion.

14. DISCLAIMER OF WARRANTIES

14.1. <u>DISCLAIMER OF ALL OTHER WARRANTIES</u>. FOR THE AVOIDANCE OF DOUBT, THE DISCLAIMER OF WARRANTIES SET FORTH IN **SECTION 7 (DISCLAIMER OF WARRANTIES)** OF THE GTCS IS INCORPORATED INTO THIS CLOUD SERVICES ADDENDUM BY REFERENCE.

15. ADDITIONAL INDEMNIFICATION

In addition to Customer's indemnification obligations set forth in **Section 9.2 (Indemnification by Customer)** of the GTCs, Customer shall defend, indemnify, and hold harmless CGC and its Affiliates against claims brought against CGC by any third party arising from or related to (a) CGC's or Customer's use of or access to Third-Party Products; (b) CGC's use of or access to Customer's software, machines, equipment, systems, information technology environment, or premises in connection with the provision of any support services; and (c) Customer's use of the Product in connection with any High Risk Use.

16. NOTICE

Notwithstanding the notice provisions contained in **Section 14.5 (Notices)** of the GTCs, any notices or other communications required or permitted to be provided pursuant to this Agreement may be provided by CGC to Customer (i) on the CGC portal for the Product or (ii) by electronic mail to Customer's email address on record in CGC's account information records.

17. MODIFICATION OR AMENDMENT OF AGREEMENT

Notwithstanding the provisions contained in **Section 14.17 (Entire Agreement; Amendments; Execution)** of the GTCs, Customer agrees and acknowledges that CGC may modify or amend any terms and conditions contained in the Agreement, in whole or in part, at any time by posting any such modifications or amendments (or the modified or amended Agreement) on the www.simulate365.com and such modifications or amendments will be effective when posted. If any modifications or amendments to the Agreement have a material adverse impact on Customer's use of the Product, then Customer may terminate the Transaction Document as it relates to the impacted Product by providing CGC with a notice of termination on or before the tenth (10th) day following the posting of such modifications or amendments (or the modified or amended Agreement). If Customer terminates the Transaction Document as it relates to the impacted Product, then CGC shall provide to Customer a refund of any prepaid but unused subscription fees paid to CGC for such Product under the applicable Transaction Document for the corresponding remaining portion of the TD Term.

CAPITAL GAIN CONSULTANTS

DATA PROCESSING ADDENDUM

1. DEFINITIONS

1.1. References to Personal Data, Data Subject, Data Controller, Data Processor, Processing, or Personal Data Breach shall be as defined under the Data Protection Legislation.

1.2. "**Customer Personal Data**" shall mean the Personal Data that is uploaded into the Products or otherwise provided to CGC or its representatives pursuant to the delivery of Products pursuant to a valid license or other agreement with the Customer.

1.3. "**Data Protection Legislation**" shall mean (i) the General Data Protection Regulation ((EU) 2016/679) ("**GDPR**") and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, and then (ii) any successor legislation to the GDPR.

1.4. "**Standard Contractual Clauses**" shall mean the standard contractual clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Decision 2010/87/EU.

2. DATA PROTECTION

2.1. This Data Processing Addendum shall only apply to the extent the Data Protection Legislation applies to Products and services rendered pursuant to the Agreement. To the extent the Data Protection Legislation applies, then this Addendum shall form a part of and become incorporated therein with the terms and conditions of the Agreement.

2.2. Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Section 2.2 is in addition to, and does not relieve, remove, or replace, a Party's obligations under the Data Protection Legislation.

2.3. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and CGC is the Data Processor. The following set out the details of the Data Processing to be undertaken by CGC.

Scope	Processing of the Customer Personal Data pursuant to delivery of the Products.
Nature of processing	Transfer, storage, and such other processing activities that are specified by the Customer pursuant to the Product terms and conditions.
Purpose of processing	The provision of Products to the Customer.
Duration of the processing	The duration that a valid agreement is in place with the Customer unless otherwise required by law.
Types of Personal Data	The Customer Personal Data (as defined above) which may include but not be limited to Name, Email address, Phone number, Device ID (with data about the vendor, version & features of the device), IP address and/or Postal code.
Categories of Data Subject	The Customer's customers, employees, suppliers.

2.4. Without prejudice to the generality of Section 2.2, the Customer will ensure that it has a legal basis for processing, including all necessary and appropriate consents and notices, to enable the lawful transfer of the Personal Data to CGC for the duration and purposes of this agreement.

2.5. CGC shall process the Customer Personal Data only on the written instructions of the Customer (as detailed in Section 2.3 above) unless CGC is required by the laws of any member of the European Union or by the laws of the European Union applicable to CGC to process Personal Data ("**Applicable Laws**"), which shall be undertaken upon notice to the Customer (where permitted). Confirming acceptance to these terms shall constitute the Customer's written instructions for CGC to undertake the processing detailed in Section 2.3.

2.6. CGC shall ensure that it has in place appropriate technical and organizational measures, to protect against unauthorized or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate and proportionate to the harm that might result from the same, having regard to the state of technological development and the cost of implementing any measures.

2.7. CGC shall, in relation to any Customer Personal Data processed in connection with the performance by CGC of its obligations under this agreement:

2.7.1. ensure that all personnel who have access to and/or process Personal Data are obliged

to keep the Personal Data confidential; and

2.7.2. not transfer any Personal Data outside of the European Economic Area unless the prior written authorization of the Customer has been obtained and the following conditions are fulfilled:

(a) the Customer or CGC has provided appropriate safeguards in relation to the transfer which shall include use of the Standard Contractual Clauses or confirmation that such transfer is made subject to the EU-US Privacy Shield (as applicable);

(b) the data subject has enforceable rights and effective legal remedies;

(c) CGC complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(d) CGC complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) taking into account the nature of the processing and the information available to CGC, assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, as applicable;

2.7.3. notify the Customer without undue delay on becoming aware of a Personal Data Breach;

2.7.4. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

2.7.5. maintain complete and accurate records and information to demonstrate its compliance with this Section 2.7 and allow for audits by the Customer or the Customer's designated auditor.

2.8. The Customer consents to CGC appointing third-party processors of Personal Data under this agreement. CGC confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Data Processing Addendum.