
SOFTWARE AS A SERVICE CONTRACT
GENERAL TERMS AND CONDITIONS

InSimu Ltd.

2020

**INSIMU
SOFTWARE AS A SERVICE CONTRACT
GENERAL TERMS AND CONDITIONS**

The present software as a service contract general terms and conditions (hereinafter: “**GTC**”) contain the conditions of providing access to the InSimu Patient virtual patient simulation medical application (hereinafter: “**Application**”) and its premium features specified in the Application description under **Annex II** for universities specified in the order form attached under **Annex I** to the present GTC (hereinafter: “**University**”) available in the App Store and Google Play Store (hereinafter collectively: “**Webstore**”). Furthermore, the present GTC contain all the relevant circumstances regarding the Application and the rights and obligations of InSimu and the University (hereinafter collectively referred to as “**Parties**”, separately as “**Party**”) for the purpose to make the University able to use the Application to reform its education practices by implementing the Application into its practical instruction and providing its students, educators and administrative staff (hereinafter: “**Users**”) with access to the Application.

1. The Service Provider

Name of the company: **InSimu Limited Liability Company** (hereinafter: “**Service Provider**” or “**InSimu**”)

Registered seat: **4024 Debrecen, Burgundia street 20. 3./12., Hungary**

Tax number: **25747054-2-09**

EU Tax number: **HU25747054**

Registration number at the Tribunal of Debrecen as a Court of Registration: **09-09-028171**

E-mail address: support@[insimu.com](mailto:support@insimu.com)

Language of GTC: **English**

Contact person: **Dr. Gabor Toth**

2. The conclusion of the contract between the Parties

The present GTC shall be deemed accepted, and the present GTC shall govern the rights and obligations of the Parties from the date of the last authorized signature of the order form attached under **Annex I** to the present GTC (hereinafter: “**Order Form**”; GTC and Order Form shall collectively be referred to as “**Contract**”).

3. Subject and duration

3.1 Subject

InSimu provides access to the Application for the University, and during the period to be determined under section 3.2 below provides the University with the number of User profiles specified in the Order Form.

3.2 Duration

The present GTC and the Order Form shall govern the legal relationship of the Parties regarding the provision of the access to the Application for a determined period for 1, that is one year from the date of the last authorized signature of the Order Form, provided that InSimu shall only be obliged to

provide the Application as prescribed in the Contract within 7, that is seven calendar days after the due payment of the Advance to be determined below. In case the access to the Application was distributed to the University by an agent of InSimu, the payment of the Advance is not a prerequisite to the provision of the access to the Application.

4. The scope and amendment of the GTC

The Service Provider reserves the right to update or amend all or any part of the present GTC at any time. The Service Provider informs the Universities about the latest amendment of the GTC by a short notice through the Application or on the homepage of its website, or directly via e-mail.

The GTC and its amendments shall be applicable to the Contracts concluded after the publication of the amendments of the GTC.

In case of a Contract concluded before the amendment of the GTC, the amended GTC shall only become the part of the Contract with the prior written consent of the Parties.

5. Rights and obligations of the Parties

5.1 Rights and obligation of InSimu

InSimu creates and provides the University with promo code(s) or access based on university email domain valid for the amount of the accounts purchased by the University.

InSimu provides the Users with the access and information made by InSimu to the Application, furthermore provides the Users with any necessary information on the technical requirement of the Application.

InSimu is obliged to take all reasonable effort possible to ensure the continuous availability and accessibility of the Application during the period specified under section 3.2 of the present GTC.

Despite the effort shall be taken by InSimu the continuous operation cannot be guaranteed by InSimu, and in connection with this possibility the acknowledgment of the University is presupposed by the Service Provider. InSimu shall not be liable for any direct or indirect damages arising from technical breakdowns, outages, or destructive applications or programs placed by third parties, furthermore any inaccessibility arising out of the erroneous operation of the platform from where the Application can be downloaded.

InSimu provides the access to the Application within 7, which is seven calendar days after the University due performed its payment obligation regarding the Advance to be determined below. In case the access to the Application was distributed to the University by an agent of InSimu, the payment of the Advance is not a prerequisite to the provision of the access to the Application.

Having regard to the nature of the service to be provided in accordance with the provision set forth under the Contract, the Application shall be solely provided by InSimu.

5.2 Rights and obligation of the University

For the use of the Application, the University is obliged to pay the Fee specified in the Order Form within the payment period specified in the present GTC.

If any alteration occurs in relation to the data specified under ***Annex III.***, the University is obliged to inform InSimu without any undue delay, but no later than 5, that is five calendar days after the occurrence of such alteration. InSimu shall not be liable for any damages or loss arising out of any delay in relation to informing InSimu on any alteration specified in the present section.

6. Fee and payment conditions

6.1 Fee

The Fee shall be paid in two installments. The first installment shall be paid before the access to the Application is provided, the second installment shall be paid at the latest the end of the 6th, that is sixth months after the first installment.

For providing access to the Application and the performance of the services specified in the Contract InSimu is entitled to an assignment fee (hereinafter: “**Fee**”) specified in the Order Form and to the reimbursement of its necessary and justified expenses arising out of the performance of the Contract.

InSimu is obliged to issue an invoice on the first half of the Fee (hereinafter: “**Advance**”) within 5, which is five calendar days and on the second half of the Fee within 150, which is one hundred fifty calendar days after the signature date of the Order Form as specified under section 2 of the present GTC and send the invoice without undue delay to the University.

6.2 Payment conditions

The University shall pay the value-added tax (hereinafter: “**VAT**”) after the Fee. In case the University has a VAT identification number issued by one of the member states of the European Union, the rate of VAT is 0%, which is zero percent, otherwise, the University shall pay a rate of 27%, that is twenty-seven percent VAT. If the University is under the jurisdiction of a non-EU member state, the rate of VAT is 0%, which is zero percent.

The Fee shall be paid in 14, that is fourteen calendar days after the receipt of the invoice by wiring the Fee to InSimu’s bank account specified in the invoice.

In case of late payment, 20%, that is twenty percent default interest shall be paid in accordance with the provisions of Act V of 2013 on the Hungarian Civil Code (hereinafter: “**HCC**”). In addition to the default interest, the University shall pay every and each costs, penalties and fees that are prescribed by the applicable legislation of Hungary or entitles InSimu to enforce that.

6.3 Fee and payment conditions in case of distribution

In case the access to the Application was distributed to the University by an agent of InSimu, the consideration for the Application and the payment conditions are specified solely by the agent and the University independently from InSimu, therefore in such case section 6.1 and 6.2 above are not applicable.

7. Copyright

The Application is under the copyright protection, thus the algorithms, methods, solutions, and the related knowledge, know-how, intellectual properties, and intellectual works available and used by InSimu during the performance of the Contract, and in order to perform the Contract shall remain the property of InSimu, and InSimu shall be entitled to legal protection related to them.

InSimu warrants, that performing the Contract does not infringe the intellectual property of others, and third parties have no such right that prevents or hinders the use of the Application and may provide a basis for usage fee or compensation towards the University.

The University shall only be entitled to use the Application within its ordinary scope of activity and shall only use it for the purpose described in the preamble.

Under the provisions of the Contract the University is solely provided with access to the Application, therefore nothing in the Contract shall be construed as granting license or permission of InSimu to provide license or sublicense to any third party, furthermore, the University is not entitled to replicate, modify, revise, adapt, develop, translate, correct, reverse engineer, decrypt or decipher the Application or any element thereof.

If the provision of the present section is infringed by the University, then the University is obliged to compensate InSimu for any damages caused, furthermore, obliged to fully indemnify InSimu from any consequences of the infringement. The infringement of the obligation of the University prescribed by the present section shall be deemed as a material breach.

8. Non-disclosure obligation

InSimu and the University represent and warrant to treat confidential every information, data acquired in connection with the conclusion and the performance of the Contract or in any other ways, related to the other Party, especially its business, financial and corporate legal relationships or the performance of the Contract, its details regardless of the other Party classifies them as a trade secret or not.

Every fact, data, information, in connection with the subject of the counseling regarding the activity of InSimu, that the University became aware of during the performance of the Contract, is strictly confidential and may be disclosed to a third party only with the prior explicit written consent of InSimu.

The Parties furthermore represent and warrant not to disclose the information described in the present section during the term or for an additional 5, that is five years after the termination of the Contract to any third-party, use it in any other way not related to the subject of the Contract or misuse it. The Parties may only use the information exclusively for the performance of the Contract, to the extent necessary and may only make available it to employees or subcontractors, who are also obliged to

keep the non-disclosure obligation stipulated in the present section, and they are responsible for their confidentiality as their own.

The Party shall have full liability to any and all damage resulting from the infringement of the provisions of the non-disclosure obligation.

The Party is obliged to retain the information described in the present section, and shall without delay inform the holder of such information, if it becomes aware of the unlawful acquisition of such information and shall cooperate to take action necessary to protect the information described in the present section.

It shall not constitute as a breach of the non-disclosure obligation if InSimu – without describing the content of the Order Form – uses the fact of the Contract as a reference in order to initiate other legal relationships.

InSimu is entitled to use, as a reference and client, the name and logo of the University on its own communication materials and website.

The data or information is excluded from the non-disclosure obligation (i) which is commonly known; (ii) which was not made public by a breach of the Contract; (iii) which was already in the possession of the other Party without any disclosure restrictions, before he received it from the disclosing Party; (iv) which the using Party received from a third party, who acquired or developed it legally and is not restricted by disclosure restrictions; (v) which was developed by one Party without the use of the confidential information of the other Party; (vi) which is handed over to the competent authority by the respective Party due to legal provisions, and inform the other Party – preferably before the handover - regarding this obligation.

9. Termination

9.1 Ordinary termination

Having regard to the determined period of the Contract, the termination of the Contract with notice is explicitly excluded.

9.2 Termination without notice

In case of the material breach of the other Party – with a written unilateral statement containing the reasoning – the injured Party is entitled to terminate the Contract without notice.

The following shall be deemed material breach in particular but not exclusively, if

- a) the University does not perform its payment obligation within 30, that is thirty calendar days after the end of the deadline specified under section 6 of the present GTC;
- b) the University infringes any of its obligation specified under section 7 of the present GTC;
- c) InSimu does not provide access to the Application within 30, that is thirty calendar days after the University due performed its payment obligation on the amount of the Advance.

In any case, the Parties shall settle accounts with respect to the service performed by InSimu.

In the event of termination of the Contract, each Party shall return to the other Party immediately all documentation and data received under the Contract.

10. Contact

All notices by and between the Parties in relation to the Contract shall be made and sent in writing as a postal delivery or via carriers (courier services) with confirmation of receipt. The date of sending such notices shall be the date of receipt, which date may be on business days only, and shall be considered as served to the other Party on that day, if received by the other Party before 5:00 PM Berlin local time (Time Zone GMT +01:00) or if received later than 5:00 PM Berlin time – on the next business day.

The notice shall be deemed as served on the day indicated on the confirmation. If such days are not business days, the notices shall be deemed as served on the first business day following the date indicated on the confirmation. In case of unsuccessful delivery, notices sent as registered postal delivery or via carriers shall be deemed as served on the 5th, that is the fifth calendar day following the first unsuccessful delivery attempt at the latest.

Any and all notices shall be sent to the contact addresses specified in the Order Form.

11. Applicable law and dispute resolution

For matters not regulated in the Contract, the provisions of the HCC and the applicable Hungarian laws shall apply.

In case of any contractual dispute or disagreement between the Parties, the Parties shall make all effort to settle the dispute out of court in an amicable way.

In case the dispute cannot be resolved by negotiation, the exclusive competence of the competent Hungarian court regarding any disputes arising from the Contract is stipulated. In case the competent Hungarian court could not be determined by reason of any ground for jurisdiction described by any other laws, then the Parties – depending on the competence – stipulate and submit themselves to the exclusive competence of the Central District Court of Buda in Hungary.

12. Miscellaneous

The Parties hereby declare and warrant in their own regard to the other Party, by the signing and during the full term of the Contract, that:

- (i) it's legal entity lawfully operating and registered in the register of companies and/or a registered legal entity, against whom or upon his request there is no insolvency, liquidation, dissolution, or other similar proceedings in progress and is not aware of any fact which could implicate such proceedings;
- (ii) it's in the possession of the necessary corporate, official and any other authorizations, permits, approvals for the conclusion and performance of the Contract;
- (iii) the conclusion and the performance of the Contract do not violate the rights and are not dependent on the approval of any third parties or if yes, such third party has already given its approval.

InSimu shall perform the Contract in person, with the contribution of the natural persons in employment, membership, or agency relation to him.

The Contract shall constitute the entire agreement between the University and InSimu relating to the provision of access to the Application and the services specified in the Contract and supersedes all prior or simultaneous communications or agreements between the Parties with respect to the Application and the services specified in the Contract.

The Parties - provided that they have not agreed otherwise in writing – may not assign any rights under the Contract to any third party, except those cases, when there is a succession in the person of the University or the University transfers that part of his business for which InSimu conducts the activities described in the preamble. In other cases, the Contract may only be assigned with the prior written consent of the other Party.

Every and each annex to the present GTC shall form an integral part of the GTC.

In case that any provision of the Contract would be invalid, or would become invalid, furthermore in case any circumstances were not regulated in the Contract, it does not affect the validity of other provisions of the Contract. The invalid provision shall be replaced by such a provision, or the not-regulated circumstance shall be regulated with such a provision, which - if legally possible - would have been the nearest to the original will of the Parties if they had taken this point into consideration.