



Contract Number  
**23-1004**

SAP Number

## Arrowhead Regional Medical Center

<b>Department Contract Representative</b>	William L. Gilbert
<b>Telephone Number</b>	(909) 580-6150
<b>Contractor</b>	Procedural Learning Safety Collaborative, dba Society for Improving Medical Professional Learning
<b>Contractor Representative</b>	Max Bosner
<b>Telephone Number</b>	(917) 907-4474
<b>Contract Term</b>	For as long as the website and mobile application are in use
<b>Original Contract Amount</b>	N/A
<b>Amendment Amount</b>	N/A
<b>Total Contract Amount</b>	N/A
<b>Cost Center</b>	

**Briefly describe the general nature of the contract:** A non-financial End User License Agreement, including non-standard terms, with Procedural Learning Safety Collaborative, dba Society for Improving Medical Professional Learning for the County's use of the website and services accessible through the site and the mobile application, for as long as the website and mobile application are in use.

**FOR COUNTY USE ONLY**

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
▶ Bonnie Uphold, Supervising Deputy County Counsel	▶	▶ William L. Gilbert, Director
Date <u>8-30-2023</u>	Date	Date <u>8/30/23</u>

## SIMPL End User License Agreement

Last Updated: May 15, 2023

Please read this End User License Agreement (this “EULA”) and our Privacy Policy <https://reports.simpl.org/privacy-policy/>) (“Privacy Policy”) carefully because they govern your use of the website (and any subdomains thereof) located at <https://www.simpl.org/> (the “Site”) and services accessible via the Site and corresponding mobile application (“App”) offered by Procedural Learning Safety Collaborative, d/b/a Society for Improving Medical Professional Learning (SIMPL)(“SIMPL”). To make this EULA easier to read, the Site, our services and App are collectively called the “SIMPL Services.”

**IMPORTANT NOTICE REGARDING ARBITRATION FOR U.S. CUSTOMERS: WHEN YOU AGREE TO THIS EULA YOU ARE AGREEING (WITH LIMITED EXCEPTION) TO RESOLVE ANY DISPUTE BETWEEN YOU AND SIMPL THROUGH BINDING, INDIVIDUAL ARBITRATION RATHER THAN IN COURT. PLEASE REVIEW CAREFULLY SECTION 17 (DISPUTE RESOLUTION) BELOW FOR DETAILS REGARDING ARBITRATION.**

- 1. Description of SIMPL Services.** The SIMPL Services include SIMPL’s proprietary software platform that enables the collection, analysis, management, and distribution of certain data, and certain features thereof are accessible via the Site and App.
- 2. Agreement to EULA.** By using our SIMPL Services, you agree to be bound by this EULA. If you don’t agree to be bound by this EULA, do not use the SIMPL Services.
- 3. Privacy Policy.** Please review our Privacy Policy, which also governs your use of the SIMPL Services, for information on how we collect, use and share your information.
- 4. Changes to this EULA or the SIMPL Services.** We may update this EULA from time to time in our sole discretion. If we do, we’ll let you know by posting the updated EULA on the Site, to the App and/or may also send other communications. If you continue to use the SIMPL Services after we have posted the updated EULA it means that you accept and agree to the changes. If you don’t agree to be bound by the changes, you may not use the SIMPL Services anymore. Because our SIMPL Services are evolving over time we may change or discontinue all or any part of the SIMPL Services, at any time and without notice, at our sole discretion.
- 5. Who May Use the SIMPL Services?** You may use the SIMPL Services only if you have been specifically granted access by SIMPL (or an authorized third-party organization of SIMPL who has been granted authority to provide access pursuant to a separate agreement between SIMPL and such third-party organization) to the SIMPL Services, you are 18 years or older, and you are capable of forming a binding contract with SIMPL (and not otherwise barred from using the SIMPL Services under applicable law).
- 6. Feedback.** We appreciate feedback, comments, ideas, proposals and suggestions for improvements to the SIMPL Services (“Feedback”). If you choose to submit Feedback, you agree that we are free to use it without any restriction or compensation to you.
- 7. Our Intellectual Property.** We may make available through the SIMPL Services content that is subject to intellectual property rights. We (and our licensors) retain all rights to that content.

## 8. Your Content and Data.

(a) Posting Content. The SIMPL Services may allow you to store or share content such as text (in posts or communications with others), files, documents, graphics, images, software, audio, and video. Anything (other than Feedback) that you post or otherwise make available through the SIMPL Services is referred to as “User Content”. SIMPL does not claim any ownership rights in any User Content and nothing in this EULA will be deemed to restrict any rights that you may have to your User Content.

(b) Permissions to Your User Content. By making any User Content available through the SIMPL Services you hereby grant to SIMPL a non-exclusive, transferable, worldwide, royalty-free license, with the right to sublicense, to use, copy, modify, share, distribute, and disclose your User Content solely (i) in connection with our provision of the SIMPL Services, and (ii) for health, healthcare, education, research, and quality improvement purposes, and other related purposes not prohibited by applicable law.

(c) Your Responsibility for User Content. You are solely responsible for all your User Content. You represent and warrant that you have (and will have) all rights that are necessary to grant us the license rights in your User Content under this EULA. You represent and warrant that neither your User Content, nor your use and provision of your User Content to be made available through the SIMPL Services, nor any use of your User Content by SIMPL on or through the SIMPL Services will infringe, misappropriate or violate a third party’s intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

(d) Removal of User Content. You can remove your User Content by specifically deleting it. You should know that in certain instances, some of your User Content (such as posts or comments you make) may not be completely removed and copies of your User Content may continue to exist on the Services. To the maximum extent permitted by law, we are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of your User Content

## 9. Rights and Terms for Apps.

(a) App License. If you comply with this EULA, SIMPL grants to you a limited non-exclusive, non-transferable license, with no right to sublicense, to download and install the App on your personal computers, mobile handsets, tablets, wearable devices, and/or other devices and to run the App solely for your own personal non-commercial purposes. Except as expressly permitted in this EULA, you may not: (i) copy, modify or create derivative works based on the App; (ii) distribute, transfer, sublicense, lease, lend or rent the App to any third party; (iii) reverse engineer, decompile or disassemble the App (unless applicable law permits, despite this limitation); or (iv) make the functionality of the App available to multiple users through any means.

(b) Additional Information: Apple App Store. This Section 9(b) applies to any App that you acquire from the Apple App Store or use on an iOS device. Apple has no obligation to furnish any maintenance and support services with respect to the App. In the event of any failure of

the App to conform to any applicable warranty, you may notify Apple, and Apple will refund the App purchase price to you (if applicable) and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App. Apple is not responsible for addressing any claims by you or any third party relating to the App or your possession and use of it, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third-party claim that your possession and use of the App infringe that third party's intellectual property rights. Apple and its subsidiaries, are third-party beneficiaries of this EULA, and upon your acceptance of this EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce this EULA against you as a third-party beneficiary thereof. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a terrorist-supporting country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You must also comply with any applicable third-party terms of service when using the App.

**10. General Prohibitions and SIMPL's Enforcement Rights.** You agree not to do any of the following:

- (a) Communicate, transmit, provide, or otherwise make available through the SIMPL Services or otherwise to SIMPL any Protected Health Information (PHI) (as that term is defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")), other than a Limited Data Set (as that term is defined under HIPAA) in the manner in which the SIMPL Services allow and are intended to be used;
- (b) Use, display, mirror or frame the SIMPL Services or any individual element within the SIMPL Services, SIMPL's name, any SIMPL trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without SIMPL's express written consent;
- (c) Access, tamper with, or use non-public areas of the SIMPL Services, SIMPL's computer systems, or the technical delivery systems of SIMPL's providers;
- (d) Attempt to probe, scan or test the vulnerability of any SIMPL system or network or breach any security or authentication measures;
- (e) Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by SIMPL or any of SIMPL's providers or any other third party (including another user) to protect the SIMPL Services;
- (f) Attempt to access or search the SIMPL Services or download content from the SIMPL Services using any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by SIMPL or other generally available third-party web browsers;

- (g) Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;
- (h) Use any meta tags or other hidden text or metadata utilizing a SIMPL trademark, logo URL or product name without SIMPL's express written consent;
- (i) Use the SIMPL Services, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by this EULA;
- (j) Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the SIMPL Services to send altered, deceptive or false source-identifying information;
- (k) Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the SIMPL Services;
- (l) Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the SIMPL Services;
- (m) Collect or store any personally identifiable information from the SIMPL Services from other users of the SIMPL Services without their express permission;
- (n) Impersonate or misrepresent your affiliation with any person or entity;
- (o) Violate any applicable law or regulation; or
- (p) Encourage or enable any other individual to do any of the foregoing.

However, we have the right to do so for the purpose of operating the SIMPL Services, to ensure compliance with this EULA and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable access to any content at any time and without notice, including, but not limited to, if we, at our sole discretion, consider it objectionable or in violation of this EULA. We have the right to investigate violations of this EULA or conduct that affects the SIMPL Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

**11. Links to Third Party Websites or Resources.** The SIMPL Services (including the App) may allow you to access third-party websites or other resources. We provide access only as a convenience and are not responsible for the content, products or services on or available from those resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party resources.

**12. Termination.** We may suspend or terminate your access to and use of the SIMPL Services, including suspending access to or terminating your account, at our sole discretion, at any time and without notice to you. You may cancel your account at any time by sending us an email at [support@simpl.org](mailto:support@simpl.org). Upon any termination, discontinuation or cancellation of the SIMPL Services or your account, the following Sections will survive: 6, 7, 8(b), 10, 12, 13, 14, 15, 16, 17, and 18.

**13. Warranty Disclaimers.** SIMPL uses its reasonable efforts to provide you with SIMPL Services in a professional and industry standard manner. That being said, THE SIMPL SERVICES ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the SIMPL Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any information or content on the SIMPL Services.

**14. Indemnity.** You will indemnify and hold SIMPL and its officers, directors, employees and agents, harmless from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (a) your access to or use of the SIMPL Services, or (b) your violation of this EULA.

**15. Limitation of Liability.**

(a) TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER SIMPL NOR ITS SERVICE PROVIDERS INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SIMPL SERVICES WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SIMPL SERVICES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS EULA OR FROM THE USE OF OR INABILITY TO USE THE SIMPL SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SIMPL OR ITS SERVICE PROVIDERS HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(b) TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE APPLICABLE JURISDICTION, IN NO EVENT WILL SIMPL’S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS EULA OR FROM THE USE OF OR INABILITY TO USE THE SIMPL SERVICES EXCEED ONE HUNDRED DOLLARS (\$100).

(c) THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SIMPL AND YOU.

**16. Governing Law and Forum Choice.** This EULA and any action related thereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of Massachusetts, without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section 17 (Dispute Resolution), the exclusive jurisdiction for all Disputes (defined below) that you and SIMPL are not required to arbitrate will be the state and federal courts located in Boston, Massachusetts and you and SIMPL each waive any objection to jurisdiction and venue in such courts.

**17. Dispute Resolution.**

(a) Mandatory Arbitration of Disputes. We each agree that any dispute, claim or controversy arising out of or relating to this EULA or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, “Disputes”) will be resolved **solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding.** You and SIMPL agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this EULA, and that you and SIMPL are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of this EULA.

(b) Exceptions. As limited exceptions to Section 17(a) above: (i) we both may seek to resolve a Dispute in small claims court if it qualifies; and (ii) we each retain the right to seek injunctive or other equitable relief from a court to prevent (or enjoin) the infringement or misappropriation of our intellectual property rights.

(c) Conducting Arbitration and Arbitration Rules. The arbitration will be conducted by the American Arbitration Association (“AAA”) under its Consumer Arbitration Rules (the “AAA Rules”) then in effect, except as modified by this EULA. The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at [www.adr.org](http://www.adr.org).

Any arbitration hearings will take place in the county (or parish) where you live, unless we both agree to a different location. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement.

(d) Arbitration Costs. Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules, and we won’t seek to recover the administration and arbitrator fees we are responsible for paying, unless the arbitrator finds your Dispute frivolous. If we prevail in arbitration, we’ll pay all of our attorneys’ fees and costs and won’t seek to recover them from you. If you prevail in arbitration, you will be entitled to an award of attorneys’ fees and expenses to the extent provided under applicable law.

(e) Injunctive and Declaratory Relief. Except as provided in Section 17(b) above, the arbitrator shall determine all issues of liability on the merits of any claim asserted by either party and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim. To the extent that you or we prevail on a claim and seek public injunctive relief (that is, injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the public), the entitlement to and extent of such relief must be litigated in a civil court of competent jurisdiction and not in arbitration. The parties agree that litigation of any issues of public injunctive relief shall be stayed pending the outcome of the merits of any individual claims in arbitration.

(f) Class Action Waiver. **YOU AND SIMPL AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, if the

parties' Dispute is resolved through arbitration, the arbitrator may not consolidate another person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section shall be null and void.

(g) Severability. With the exception of any of the provisions in Section 17(f) of this EULA ("Class Action Waiver"), if an arbitrator or court of competent jurisdiction decides that any part of this EULA is invalid or unenforceable, the other parts of this EULA will still apply.

## 18. General Terms.

(a) Reservation of Rights. SIMPL and its licensors exclusively own all right, title and interest in and to the SIMPL Services, including all associated intellectual property rights. You acknowledge that the SIMPL Services are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the SIMPL Services.

(b) Entire Agreement. This EULA constitutes the entire and exclusive understanding and agreement between SIMPL and you regarding the SIMPL Services, and this EULA supersedes and replaces all prior oral or written understandings or agreements between SIMPL and you regarding the SIMPL Services. If any provision of this EULA is held invalid or unenforceable by an arbitrator or a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of this EULA will remain in full force and effect. You may not assign or transfer this EULA, by operation of law or otherwise, without SIMPL's prior written consent. Any attempt by you to assign or transfer this EULA, without such consent, will be null. SIMPL may freely assign or transfer this EULA without restriction. Subject to the foregoing, this EULA will bind and inure to the benefit of the parties, their successors and permitted assigns.

(c) Notices. Any notices or other communications provided by SIMPL under this EULA will be given: (i) via email; or (ii) by posting to the SIMPL Services. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted.

(d) Waiver of Rights. SIMPL's failure to enforce any right or provision of this EULA will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of SIMPL. Except as expressly set forth in this EULA, the exercise by either party of any of its remedies under this EULA will be without prejudice to its other remedies under this EULA or otherwise.

19. **Contact Information.** If you have any questions about this EULA or the SIMPL Services, please contact SIMPL at [support@simpl.org](mailto:support@simpl.org), or mail 177 Huntington Ave, Suite 1703 #99773, Boston, MA 02115-3153

**Research Consent:** By clicking "I Accept," I hereby expressly grant the Procedural Learning Safety Collaborative, d/b/a SIMPL ("SIMPL") acting on behalf of any Network-specific sponsors the right to, and I consent to allowing SIMPL acting on behalf of any Network-specific sponsors to, use, share, and



disclose the data, information, and materials which I provide through the online technology platform offered by SIMPL (either through the <https://www.simpl.org> website or SIMPL's mobile application, and together with the technology platform, the "SIMPL Services") or otherwise make available to SIMPL, solely for (i) SIMPL to provide me with the SIMPL Services, and (ii) health, healthcare, education, research, and quality improvement purposes approved by SIMPL and/or the given Network-specific sponsor (and other related purposes not prohibited by law).