



Contract Number

23-1003

SAP Number

## Arrowhead Regional Medical Center

<b>Department Contract Representative</b>	<u>William L. Gilbert</u>
<b>Telephone Number</b>	<u>(909) 580-6150</u>
<b>Contractor</b>	<u>Procedural Learning Safety Collaborative, dba Society for Improving Medical Professional Learning</u>
<b>Contractor Representative</b>	<u>Max Bosner</u>
<b>Telephone Number</b>	<u>(917) 907-4474</u>
<b>Contract Term</b>	<u>September 12, 2023 through September 11, 2024, with up to four subsequent annual renewal periods</u>
<b>Original Contract Amount</b>	<u>N/A</u>
<b>Amendment Amount</b>	<u>N/A</u>
<b>Total Contract Amount</b>	<u>N/A</u>
<b>Cost Center</b>	<u></u>

**Briefly describe the general nature of the contract:** A non-financial Network Participant Agreement, including non-standard terms, with Procedural Learning Safety Collaborative, dba Society for Improving Medical Professional Learning for access to an online application, for the collection and analysis of resident physician performance and assessment data, for the initial period effective September 12, 2023 through September 11, 2024, with up to four subsequent annual renewal periods.

**FOR COUNTY USE ONLY**

Approved as to Legal Form

Bonnie Uphold  
Bonnie Uphold, Supervising Deputy County  
Counsel

Date 8-30-2023

Reviewed for Contract Compliance

▶

Date

Reviewed/Approved by Department

William L. Gilbert  
William L. Gilbert, Director

Date

8/30/23

## NETWORK PARTICIPANT AGREEMENT

This NETWORK PARTICIPANT AGREEMENT ("Agreement") is entered into as of 9/12/2023 ("Effective Date") by San Bernardino County, a political subdivision organized and existing under the constitution and the laws of the State of California operating a hospital or surgery center, on behalf of Arrowhead Regional Medical Center having offices at 400 North Pepper Avenue, Colton, California 92324 ("Participant") and Procedural Learning Safety Collaborative, d/b/a Society for Improving Medical Professional Learning (SIMPL), a nonprofit entity having offices at 177 Huntington Ave Ste 1703 #99773 Boston, Massachusetts 02115-3153 ("SIMPL").

WHEREAS, Participant and SIMPL desire to support efforts to improve resident physician education through collective participation of SIMPL's participants in the collection and analysis of performance feedback and assessment data;

WHEREAS, SIMPL will serve as the data coordinating center for (or on behalf of) the Network Sponsor (as defined below), and in connection therewith, Participant desires to receives access to the SIMPL Service (as defined below); and

WHEREAS, Participant desires to provide data through the SIMPL Service (defined below), and to receive data and reports, in connection with SIMPL as the data coordinating center for or on behalf of a Network Sponsor, and based on its participation in the SIMPL Service and;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. Definitions.

1.1 "Admin User" means an individual designated by Participant pursuant to Exhibit A and Section 4.2.

1.2 "Data Use Agreement" means the data use agreement attached hereto as Exhibit B.

1.3 "Department" means the department of the Participant that is set forth in Exhibit A.

1.4 "Documentation" means written information that SIMPL provides to Participant to assist with the use of the SIMPL Service.

1.5 "End User" means the individuals described as such in Exhibit A that has (i) been assigned a unique username-password combination to access and use the SIMPL Service and (ii) registered online to access and use the SIMPL Services.

1.6 "Participant Data" means the data and information that Participant or its End Users or Admin User input into the SIMPL Service.

1.7 "Participation Term" has the meaning set forth in Exhibit A.

1.8 "Mobile Application" the end-user mobile application that SIMPL makes available for End Users and Participants to download so they can access and use the SIMPL Service.

1.9 "Network Sponsor" means the organization designated as a "Network Sponsor" as set forth in Exhibit A.

1.10 "SIMPL Admin Website" means SIMPL's online service that provides the functionality described in Exhibit A. The SIMPL Administrative Website will be provided through the website located at a URL to be provided to Participant (the "URL"). SIMPL may change the URL from time to time upon no less than ten (10) days' notice to Participant.

1.11 "SIMPL Service" means the online technology platform offered by SIMPL, including the module (and corresponding) functionality described in Exhibit A, the SIMPL Admin Website, SIMPL Mobile Application, SIMPL Dashboard, and related dashboards and functionality provided by SIMPL.

### 2. Service.

2.1 Access to Service. Subject to the terms and conditions of this Agreement (and any additional online terms, such as SIMPL's End User License Agreement ("EULA"), as applicable), SIMPL shall, during the Participation Term, allow Admin Users to access the SIMPL Service via the URL and End Users to access the SIMPL Service through the Mobile Application solely for: (i) the Participant's internal research and/or educational purposes; and (ii) the evaluation and training of End Users by Participant and/or Network Sponsor.

2.2 Mobile Application. SIMPL shall make the Mobile Application available for End Users and Admin User to download at Apple's App Store and Google's Play Store at no additional cost. End Users' and Admin Users' access and use of the Mobile Application will be subject to their agreement with SIMPL's EULA

presented to such individuals through the Mobile Application (the “Mobile App EULA”).

2.3 SIMPL Documentation. SIMPL hereby grants to Participant the right to use and reproduce any and all Documentation, during the Participation Term, at no additional cost solely to support Participant’s use of SIMPL Service.

2.4 No Implied License; Ownership. Nothing in this Section shall be interpreted to grant (by implication or otherwise) any license or rights except as expressly stated herein. SIMPL retains ownership of the SIMPL Service, all software used to provide the SIMPL Service, and all intellectual property rights therein.

2.5 Telecommunications and Internet Services. Participant acknowledges and agrees that Participant’s and its users’ use of the SIMPL Services is dependent upon access to telecommunications and Internet services. Participant shall be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use the SIMPL Service, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. SIMPL shall not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services

### 3. Data & Reports.

#### 3.1 Contribution of & Rights to Data.

(a) Participant acknowledges and agrees that Participant Data will be stored and maintained within a database established by SIMPL (the “SIMPL Database”). Network Sponsor retains ownership of all its intellectual property.

(b) As between SIMPL and Participant, Participant or its licensors (e.g., Network Sponsor) shall retain ownership of its Participant Data. Participant hereby grants to SIMPL a non-exclusive, perpetual, irrevocable, worldwide license to use, reproduce, distribute, compile, organize, and display the Participant Data as part of the SIMPL Database and to share the Participant Data (as part of the SIMPL Database) with third-parties, subject to the data use rights and restrictions set forth in the Data Use Agreement, attached hereto as Exhibit B.

(c) Notwithstanding Participant’s ownership rights in its Participant Data, SIMPL owns all right, title, and interest in the SIMPL Database.

(d) Each Party will comply with the Data Use Agreement attached hereto as Exhibit B.

3.2 Participant Access to Participant Data. The Admin Users may access its Participant Data on behalf

of the Participant and will have the ability to create certain reports (“Reports”).

#### 3.3 Participant Access to SIMPL Database.

Participant may receive access to the SIMPL Database for research and development products that are approved in writing by SIMPL (on behalf of the applicable Network Sponsor). Any access to the SIMPL Database will be subject to Participant’s agreement to SIMPL’s standard terms and conditions that govern the SIMPL Database.

3.4 Disclaimer. SIMPL shall not be responsible or liable for: (i) any loss, destruction, or corruption of Participant Data, (ii) the unauthorized disclosure or corruption of Participant Data caused by any third party, or (iii) the disclosure of Participant Data or Reports by Participant or its End Users or Admin Users.

#### 4. Restrictions & Requirements.

4.1 Copyright Notices. Participant agrees to retain SIMPL’s copyright notices and any other notices in and/or on all of the SIMPL Software, Documentation, and Reports, and not to remove or modify or fail to reproduce any of SIMPL’s copyright or other notices that appear on or in the SIMPL Service, Documentation, Reports, and/or any portion of the foregoing.

4.2 Participant Support Administration. Participant will assign an employee to be the Admin User on behalf of the Participant. The Admin User will be responsible for the administrative duties set forth in Exhibit A and to receive and respond to End User questions with respect to use and functionality of the SIMPL Service. SIMPL will respond to reasonable tech support requests submitted by Admin Users to the following e-mail address: *support@simpl.org*

4.3 Restrictions. Participant shall not attempt to interfere with or disrupt the SIMPL Services or the Software or attempt to gain access to any systems or networks that connect thereto (except as required to access and use the SIMPL Services). Participant shall not allow access to or use of the SIMPL Services by anyone other than End Users and Admin User. Participant shall not: (a) copy, modify, distribute, reverse engineer, or attempt to access the source code of any portion of the SIMPL Services or Software; (b) rent, lease, or provide access to the SIMPL Services on a time-share or service bureau basis; or (c) transfer any of its rights hereunder. Participant shall keep confidential and not disclose to any third parties, and shall ensure that End Users and Admin Users keep confidential and do not disclose to any third parties, any user identifications, account numbers and account profiles.

4.4 Enforcement. Participant shall ensure that all End Users and Admin Users comply with the terms and conditions of this Agreement, including, without

limitation, with Participant's restrictions and obligations set forth in Data Use Agreement. SIMPL may suspend or terminate any End Users or Admin Users access to the SIMPL Service upon notice to Participant in the event that SIMPL reasonably determines that such user has violated the terms and conditions of this Agreement or the Mobile App EULA. Participant shall be liable for any violation of the terms and conditions of this Agreement by any End User or Admin User.

5. Fees and Expenses. Participant will pay SIMPL the service fees (if any) that are set forth in Exhibit A. All such applicable fees will be due and payable within sixty (60) days after the date of SIMPL's invoice therefor. Excluding taxes on SIMPL's income (if any), Participant shall pay all applicable sales tax, duties and the like incurred as a result of licensing the SIMPL Service under this Agreement.

6. Term and Termination.

6.1 Term. This Agreement begins on the Effective Date and continues for the duration of the Participation Term set forth in Exhibit A, unless terminated earlier in accordance with the terms herein.

6.2 Termination. This Agreement and all licenses will terminate thirty (30) days after notice of any breach by Participant or SIMPL remaining uncured at the end of such notice period. Participant may terminate this Agreement for its convenience upon thirty (30) days' prior written notice to SIMPL.

6.3 Effect of Termination. Upon termination or expiration, (i) Participant, and all Participant's End Users and Admin Users, shall immediately cease all use of all SIMPL Services and so certify in writing to SIMPL; (ii) Participant will return or destroy, at SIMPL's sole option, all SIMPL Confidential Information in its possession or control. No expiration or termination will entitle Participant to any refund of any fees paid by Participant hereunder. The terms of the Data use Agreement, Sections 2.4, 3.1, 3.4, 4.1, 4.3, 5, 6.2, 6.3, 7, 8.4, 9, 10, and 11 of this Agreement, and all amounts payable as of termination, shall survive termination. Termination or expiration is not an exclusive remedy and all other remedies will be available whether or not termination occurs. If Participant makes a written request for delivery of its Participant Data within thirty (30) days of termination, SIMPL will deliver such Participant Data to Participant in Microsoft Excel format.

7. Confidential Information.

7.1 Definition. As used herein, "Confidential Information" means all nonpublic information that one party (the "Disclosing Party") provides to the other party (the "Receiving Party") in connection with this Agreement, that is designated in writing as confidential

and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 7920.005). However, Confidential Information will not include any Participant Data or any information or materials that: (a) were, at the date of disclosure, or have subsequently become, generally known or available to the public through no act or failure to act by the Receiving Party; (b) were rightfully known by the Receiving Party prior to receiving such information or materials from the Disclosing Party; (c) are rightfully acquired by the Receiving Party from a third party who has the right to disclose such information or materials without breach of any confidentiality or non-use obligation to the Disclosing Party; or (d) are independently developed by or for the Receiving Party without use of or access to any Confidential Information of the Disclosing Party.

7.2 Protection. The Receiving Party will maintain the Disclosing Party's Confidential Information in strict confidence, and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or exercise its rights under this Agreement. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (a) to those employees, representatives, or contractors of the Receiving Party who have a bona fide need to know such Confidential Information to perform under this Agreement. If the Receiving Party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the Disclosing Party, it will, to the extent legally permissible, promptly notify the Disclosing Party and, if requested by the Disclosing Party, tender to the other Disclosing Party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the Receiving Party will then be entitled to comply with the request to the extent permitted by law.

8. Representations; Warranties; and Disclaimer.

8.1 Mutual Warranties. Each of the parties represents and warrants that it has the power and authority to enter into and to perform its obligations under the Agreement.

8.2 Participant Warranties. Participant represents and warrants that (i) it has received all rights, permissions, and consents from End Users for any of End Users' and Admin Users' personal information that is submitted by Participant (including by Admin User on behalf of Participant) to the SIMPL Service, and that all such rights, permissions, and consents are sufficiently broad to allow SIMPL to use such personal information to enable SIMPL to contact and register End Users and

Admin Users for the SIMPL Service and to provide the SIMPL Service to the Participant hereunder; and (ii) Participant and Participant's Data are and will remain in compliance with all applicable laws, rules, and regulations (including HIPAA), and Participant Data does not and will not infringe the intellectual property rights of any third party.

8.3 SIMPL Warranties. SIMPL represents and warrants that, to its knowledge, the SIMPL Service, when used in accordance with the terms of this Agreement, does not infringe or misappropriate the intellectual property rights of any third-party.

8.4 Disclaimer. THE SIMPL SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. SIMPL DOES NOT WARRANT RESULTS OF USE OR THAT THE SIMPL SERVICE IS BUG FREE OR THAT ITS USE WILL BE UNINTERRUPTED. UNLESS EXPLICITLY SET FORTH HEREIN OTHERWISE, SIMPL HAS NO OBLIGATION TO PROVIDE TECHNICAL SUPPORT OR SERVICES WITH RESPECT TO THE SIMPL SERVICE.

#### 9. INDEMNIFICATION AND INSURANCE.

9.1 Intentionally omitted.

9.2 SIMPL Indemnification. SIMPL shall defend (or settle), indemnify and hold harmless Participant, its officers, directors and employees (the "Participant Indemnitees"), from and against any government fines, liabilities or damages awarded in final judgment by a court, settlements agreed to, and any related expenses (including court costs and reasonable attorneys' fees) that arise out of or in connection with any third-party claim against the Participant Indemnitees arising from a breach by SIMPL of the representations and warranties set forth in Section 8.3 (SIMPL Warranties) of this Agreement. SIMPL will indemnify, defend, and hold Participant Indemnitees harmless from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by the Service.

9.3 Indemnification Process If a credible claim is made or threatened, including without limitation the filing of a lawsuit against a Participant Indemnitee, or a Participant Indemnitee receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, the Participant Indemnitee will use reasonable efforts to notify SIMPL promptly of such lawsuit, claim or election. However, a Participant Indemnitee's failure to provide or delay in providing such notice will relieve

SIMPL of its obligations only if and to the extent that such delay or failure materially prejudices SIMPL's ability to defend such lawsuit or claim. Participant will give SIMPL sole control of the defense (with counsel reasonably acceptable to Participant) and settlement of such claim; provided that SIMPL may not settle the claim or suit absent the written consent of Participant unless such settlement (a) includes a release of all claims pending against Participant Indemnitees, (b) contains no admission of liability or wrongdoing by Participant Indemnitees, and (c) imposes no obligations upon Participant Indemnitees other than an obligation to stop using the Service.

9.4 Insurance. Without in anyway affecting the indemnity herein provided and in addition thereto, SIMPL shall secure and maintain throughout the Agreement term the types of insurance with limits as shown and under the requirements set forth in Attachment 1, as attached hereto and incorporated herein.

#### 10. LIMITATION OF LIABILITY.

10.1 EXCEPT FOR A BREACH OF SECTION 4.3, INFRINGEMENT BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR PARTICIPANT'S BREACH OF ITS PAYMENT OBLIGATIONS HEREUNDER, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO THE SUBJECT MATTER OF THE AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY: (A) FOR ERROR, INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; (B) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, OR SERVICES OR TECHNOLOGY OR RIGHTS; (C) FOR ANY LOST REVENUES, LOST PROFITS, LOST SAVINGS, OR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.

10.2 EXCEPT FOR CLAIMS ARISING UNDER SIMPL'S INDEMNIFICATION AND INSURANCE OBLIGATIONS, OR FROM SIMPL'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR VIOLATION OF LAW, SIMPL SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO THE SUBJECT MATTER OF THE AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED TEN THOUSAND DOLLARS (US\$10,000).

#### 11. General.

11.1 Assignment. The Agreement is not assignable or transferable by either party without the prior written



consent of the other party; any attempt to do so shall be void.

11.2 Waivers. No failure to exercise or delay in exercising any right under the Agreement will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise of any other right hereunder. Any waivers or amendments shall be effective only if made in writing.

11.3 Severability. If any provision of the Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect and enforceable.

11.4 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under the Agreement shall be sent to the e-mail addresses set forth in Exhibit A and shall be deemed to have been duly given as of the date it was delivered.

11.5 Choice of Law. The Agreement shall be deemed to have been made in and shall be construed pursuant to the laws of the State of California without regard to conflicts of laws provisions thereof and without regard to the U.N. Convention on the International Sale of Goods. The exclusive jurisdiction and venue for disputes arising hereunder will be the state and federal courts located in the Northern District of California.

11.6 Entire Agreement. This Agreement and all exhibits attached hereto (including but not limited to the Data Use Agreement) constitutes the complete agreement between the parties concerning the subject matter hereof, and supersedes all prior or contemporaneous agreements or representations, written or oral. No other act, document, usage or custom shall be deemed to amend or modify this Agreement, including, but not limited to, the terms in any Participant purchase order or other ordering document.

11.7 Independent Contractors. SIMPL and Participant are independent contractors and not partners, joint venturers or otherwise affiliated and neither has any right or authority to bind the other in any way. Each party shall make no representations to the contrary to any third party.

11.8 Force Majeure. Neither Party will be liable under the Agreement by reason of any failure or delay in the performance of its obligations under the Agreement (except for the payment of money) on account of events beyond the reasonable control of such Party, which may include without limitation denial-of-service attacks, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the non-performing Party will be excused from any further performance of its obligations effected by the Force Majeure Event for so long as the event continues and such Party continues to use commercially reasonable efforts to resume performance.

11.9 Counterparts. The parties agree that the Agreement may be signed by manual or facsimile signatures and in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

**Procedural Learning Safety Collaborative, d/b/a Society for Improving Medical Professional Learning (SIMPL)**

DocuSigned by:  
Signature: Brian George  
62E8199165FF497...  
Typed name: Brian C. George  
Title: Executive Director

**San Bernardino County, on behalf of Arrowhead Regional Medical Center**

Signature: Dawn Rowe  
Typed name: **Dawn Rowe**  
Title: **Chair, Board of Supervisors**

SEP 12 2023



**ATTACHMENT 1**  
**INSURANCE REQUIREMENTS**

SIMPL agrees to provide insurance set forth in accordance with the requirements herein. If SIMPL uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, SIMPL agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting the indemnity herein provided and in addition thereto, SIMPL shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

a. .Reserved

b. Commercial/General Liability Insurance – SIMPL shall carry General Liability Insurance covering all operations performed by or on behalf of SIMPL providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- i. Premises operations and mobile equipment.
- ii. Products and completed operations.
- iii. Broad form property damage (including completed operations).
- iv. Explosion, collapse and underground hazards.
- v. Personal injury.
- vi. Contractual liability.
- vii. \$2,000,000 general aggregate limit.

c. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

d. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

The policy shall protect the involved Participant entities and cover breach response cost as well as regulatory fines and penalties.

2. Additional Insured. All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Participant and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for Participant to vicarious liability but shall allow coverage for Participant to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

3. Waiver of Subrogation Rights. SIMPL shall require the carriers of required coverages to waive all rights of subrogation against Participant, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit SIMPL and SIMPL’s employees or agents from waiving the right of subrogation prior to a loss or claim. SIMPL hereby waives all rights of subrogation against Participant.

4. Policies Primary and Non-Contributory. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Participant.

5. Severability of Interests. SIMPL agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between SIMPL and Participant or between Participant and any other insured or additional insured under the policy.

6. Proof of Coverage. SIMPL shall furnish Certificates of Insurance to Participant Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and SIMPL shall maintain such insurance from the time SIMPL

commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, SIMPL shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
8. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
9. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, Participant has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by Participant will be promptly reimbursed by SIMPL or Participant payments to SIMPL will be reduced to pay for Participant purchased insurance.
10. **Insurance Review.** Insurance requirements are subject to periodic review by Participant. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Participant. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Participant, inflation, or any other item reasonably related to Participant's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. SIMPL agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of Participant to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Participant.



## EXHIBIT A - Services On Behalf Of The American Board of Surgery

Network Sponsor: The American Board of Surgery

SIMPL Service: SIMPL (System for Improving and Measuring Procedural Learning) Service is SIMPL's technology platform, which enables data collection, aggregation, analysis, and visualization in pursuit of education, research, and improvement in the medical education field, including for students, resident physicians, faculty, staff, and other medical learners and educators. The SIMPL Service will consist of the following module:

- ABS EPA Module

Department: means the following General Surgery Residency Program of Participant.

End Users: means those end users of Participant which SIMPL authorizes to access the SIMPL Service.

Admin Users: The following individual that is an employee within the Department. The initial Admin User will be Shauna Stires (which may be updated by Participant from time to time).

### Duties of Admin User:

- *Provide ongoing orientation and rater training to new End Users of the Participant*
- *Create, manage, and archive SIMPL accounts for End Users*
- *Provide first-level user support for Participant's End Users*
- *Create and/or distribute Reports to End Users*
- *Communicate with SIMPL regarding any technical or other problems arising from the use of SIMPL by End Users that cannot be managed internally.*
- *Report any breach of this Agreement to SIMPL upon detection of such a breach*

Payment: N/A

Participation Term: one (1) year from the Effective Date. The Participation Term may be renewed for up to four (4) subsequent annual periods upon notice by Participant at least thirty (30) days prior to the expiration of the then-current annual period.

### Contact Info:

- SIMPL – [contracts@simpl.org](mailto:contracts@simpl.org)
- Participant – [stires@armc.sbcounty.gov](mailto:stires@armc.sbcounty.gov)

## Exhibit B – Data Use Agreement In Connection With The American Board of Surgery

### 1) Definitions.

- a) “Participant PHI” means the Participant Data that is PHI, which is limited to clinical activity information (including procedure type and CPT Code), the date of the clinical activity, program name, and provider(s) names and NPI(s).
- b) “CPT” means Current Procedural Terminology.
- c) “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and all amendments and modifications made thereto.
- d) “NPI” means National Provider Identifier.
- e) “PHI” means protected health information (as such term is defined by HIPAA).

### 2) Restrictions & Requirements.

- a) *Ethical Requirements.* Both parties agree to use data collected via the module set forth in Exhibit A (as part of the SIMPL Service) only for purposes that are compliant with all applicable local, national, and international ethical and legal guidelines.
- b) *Limited Data Set.* Both parties acknowledge and agree that the Participant PHI comprises a Limited Data Set (as such term is defined within HIPAA). Participant will ensure its Admin User and End Users to not provide SIMPL with data beyond the scope of a Limited Data Set in compliance with HIPAA. Both parties acknowledge and agree that the Participant PHI will be used only for assessment and educational purposes of Participant and Network Sponsor.
- c) *Masking Data.* When program name, provider name, and NPI are a subset of and included with (and a part of) Participant PHI, SIMPL will mask such program name, provider name, and NPI of such Participant PHI before sharing such Participant PHI on behalf of the Network Sponsor with any third-party (the “**Masked PHI**”).
- d) *Use & Sharing Restrictions.* SIMPL shall not share the Masked PHI with any third-party entities in identified format. Notwithstanding the foregoing, and only when permitted by the American Board of Surgery, SIMPL may, (i) use or disclose Participant PHI to Participant (such as for program reporting or educational purposes); (ii) use or disclose Masked PHI as aggregated with (e.g., not independent of) data submitted by other participants of the American Board of Surgery’s network, to third parties (such as third-party programs or the American Board of Surgery), for purposes of reporting (such as anonymous reporting of program usage); (iii) use or disclose Participant PHI as Masked PHI to third parties (such as third party researchers or the American Board of Surgery) for research purposes.
- e) *PHI Submission.* SIMPL does not intend to collect from Participant, in connection with this Agreement, any PHI beyond the Participant PHI. Neither Participant nor its End Users or Admin Users will submit any PHI to SIMPL other than the Participant PHI, and Participant agrees to train its End Users and Admin Users to avoid providing to SIMPL any patient names and any PHI that is not Participant PHI (including but not limited to through their written comments and suggestions)
- f) SIMPL’s obligation to protect the privacy of the Participant Data is continuous and survives any termination, cancellation, expiration, or other conclusion of this Data Use Agreement with respect to any portion of the Participant Data the SIMPL maintains after such termination, cancellation, expiration or other conclusion of this Data Use Agreement.
- g) Additionally, as part of SIMPL’s engagement with the applicable Network Sponsor, SIMPL shall:
  - i) not use or disclose the Participant PHI in violation of HIPAA;
  - ii) not use or disclose the Participant PHI other than as permitted by this Agreement or as otherwise required by law;
  - iii) use appropriate safeguards to prevent the use or disclosure of the Participant PHI that is not contemplated by this Agreement;

- iv) report to the Participant any use or disclosure of the Participant PHI not anticipated by this Agreement of which the SIMPL becomes aware;
- v) ensure that any agents, including a subcontractor, to whom SIMPL provides the limited Participant PHI agrees to the restrictions set forth in this Section 2(g) and conditions that apply to the SIMPL with respect to the Participant PHI.