

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

Contract Number

23-944

SAP Number

### San Bernardino County Fire Protection District

Department Contract Representative Dan Munsey  
Telephone Number 387-5779

Contractor Equipment Simulations LLC  
Contractor Representative \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Contract Term \_\_\_\_\_  
Original Contract Amount Non-financial  
Amendment Amount \_\_\_\_\_  
Total Contract Amount Non-financial  
Cost Center \_\_\_\_\_

**Briefly describe the general nature of the contract:**

A non-financial Terms of Use Agreement, including non-standard terms, with Equipment Simulations LLC for SimsUShare training software licenses and support, beginning upon download, installation, or use of the services and continuing for the subscription period, until terminated by either party.

**FOR COUNTY USE ONLY**

Approved as to Legal Form

▶ Bonnie Uphold  
Bonnie Uphold, Supervising Deputy County Counsel

Date 9-1-2023

Reviewed for Contract Compliance

▶ \_\_\_\_\_

Date \_\_\_\_\_

Reviewed/Approved by Department

▶ \_\_\_\_\_

Date \_\_\_\_\_

## **SIMSUSHARE® TERMS OF USE**

These Terms of Use (“Terms”) constitute an agreement between you and Equipment Simulations LLC (“we” or “us”) and govern your use of SimsUShare.com (the “Site”), the SimsUshare® mobile application (the “App”), and all services, features, software, documentation, content or other materials made available to you by means of the Site or the App, including any Simulations (as defined below) made available or created by means of the Site or the App, any software downloaded by means of the Site or the App and any updates, upgrades, versions, modifications, derivative works or revisions of any of the foregoing that we may furnish from time to time in our discretion (collectively, the “Services”). These Terms will also be deemed to include any additional payment terms and other terms or conditions set forth by the application store (for iOS, the Apple App Store, and for Android, the Google Play Store) through which you purchase our products or otherwise provided on our Site or App.

All references in these Terms to “you” or “your” shall be deemed to refer to you individually, if you are entering into these Terms on an individual basis, and to the corporation, partnership, agency or other organization or legal entity that you represent, if you are entering into these Terms on behalf of such organization or entity.

By downloading, installing or using any of the Services, you acknowledge that you have read, understood, and agree to be bound by and comply with these Terms. If you do not agree to the terms and conditions of these Terms, you are not entitled to use the Services.

### **1. BACKGROUND.**

The Services allow you to create and use virtual simulations of real-world environments and situations for emergency and safety training and instructional purposes, incorporating content that you provide, content that other users provide and content that we provide.

## 2. DEFINITIONS.

(a) “Intellectual Property Rights” means, collectively, all trademarks, service marks, trade dress, logos, copyrights and rights of authorship; all applications, registrations, derivative works and renewals relating to the preceding items; all database rights, moral rights, inventions, rights of inventorship, rights of publicity and privacy, trade secrets, know-how and rights under unfair competition and unfair trade practices laws; and all other worldwide intellectual and industrial property rights related thereto.

(b) “Our Content” means any images, photos, effects, graphics, data, scenarios, text, videos, multimedia content or other materials provided by us by means of the Services for use in connection with Simulation(s).

(c) “Shared Content” means any Simulations or other images, photos, effects, graphics, data, scenarios, text, videos, multimedia content or other materials, made available by a user of the Services for use by other users of the Services.

(d) “Simulation(s)” means any virtual simulation or other content created by means of the Services.

(e) “Your Content” means any images, photos, effects, graphics, data, scenarios, text, videos, multimedia content or other materials, including any Shared Content, provided by you by means of the Services for use in connection with Simulation(s).

## 3. LICENSES

(a) Our License to You. Subject to all of the terms and conditions herein, including your payment of the purchase price for the applicable SimsUshare product license, we grant you a non-exclusive, revocable right and license during the subscription period, without a right to assign or sublicense, solely for non-commercial purposes, to: (i) install and use to create Simulations; (ii) to incorporate Your Content and any of Our Content and/or Shared Content that we make available to you, into such Simulations by means of the Services and (iii) to modify, review, use and display Simulations that you create. All rights that we do not expressly grant in these Terms are reserved by us.

(b) Your Licenses to Us.

(i) Your Content. You grant to us and our affiliates, successors, assigns and/or sublicensees a perpetual, irrevocable, royalty-free, worldwide, assignable, transferrable, non-exclusive right and license to reproduce, display, transmit, modify, publish, create derivative works from and otherwise use any of Your Content that you provide to us, in any formats or media now known or hereafter devised, for the purposes of providing you with and/or promoting our services.

(ii) Shared Content. If you elect to upload any Shared Content, you grant to us and our affiliates, successors, assigns and/or sublicensees a perpetual, irrevocable, royalty-free, worldwide, assignable, transferrable, non-exclusive right and license to reproduce, display, transmit, modify, publish, create derivative works from and otherwise use any of Your Content that you provide to us for such purpose, in any formats or media now known or hereafter devised, for the purposes of providing you and other users with, and for us to promote, our Services, including allowing other users to create or use Simulation(s) comprising or incorporating Shared Content.

#### 4. USER CONDUCT.

You represent, warrant and agree that you will not:

(a) violate, defeat or circumvent, or attempt to violate, defeat or circumvent, the security of the Services or any of our websites, software or equipment;

(b) reverse engineer, modify, decompile or disassemble any portion of the Services;

(c) copy, distribute, redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer the Services or any Simulation;

(d) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Services or any Simulation; or

(e) use the Services or any Simulation in a manner that, or provide any content in connection with the Services or any Simulation that:

(i) violates any applicable laws, rules, orders, ordinances, regulations, statutes, requirements, codes and/or executive or judicial orders of any international, national, state, municipal or other governmental authorities;

(ii) is harmful, threatening, harassing, discriminatory, tortious, libelous, defamatory, vulgar, obscene, pornographic or otherwise objectionable;

(iii) is intended or likely to promote or facilitate, or aid in any conspiracy or planning in connection with: damage to, or destruction of, property; injury, harm or death of persons; violence; acts of war or terrorism; or creation of any civil

disturbance;

(iv) invades another's right of privacy or publicity; or

(v) infringes, misappropriates or violates any Intellectual Property Rights.

## 5. PROPRIETARY RIGHTS.

As between you and us, subject to the licenses granted in these Terms: (a) we own all Intellectual Property Rights in the Services, including Our Content; and (b) you own all Intellectual Property Rights in Your Content.

## 6. LINKS.

The Site may contain links to websites that we do not operate. We are not responsible for the content of any such websites, and you should direct any concerns regarding such websites to their respective site administrators or webmasters.

## 7. REPRESENTATIONS AND WARRANTIES.

You represent and warrant that: (a) you own all Intellectual Property Rights in Your Content and have the right to provide Your Content to us for use in Simulation(s) and as otherwise contemplated herein; and (b) you are at least eighteen (18) years old.

## 8. INDEMNITY.

You agree to indemnify, defend and hold harmless us and our affiliates, and all officers, directors, owners, agents, or licensors thereof (collectively, the "Indemnified Parties") from and against any and all liability and costs, including reasonable attorneys' fees, incurred by the Indemnified Parties in connection with any claim arising out of Your Content, your creation or use of a Simulation, or any breach by you or any user of your account of these Terms, including any representation or warranty herein. You shall cooperate as fully as reasonably required in the defense of any such claim. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter subject to indemnification by you.

## 9. DISCLAIMER.

YOU ASSUME ALL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SERVICES INCLUDING ANY SIMULATIONS AND ANY RELIANCE THEREON.

THE SERVICES, INCLUDING ANY SIMULATIONS GENERATED THEREWITH, ARE PROVIDED "AS IS" WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE, NON-INFRINGEMENT, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITATION OF THE FOREGOING, WE MAKE NO REPRESENTATIONS OR WARRANTIES THAT ANY OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY SIMULATION WILL HAVE PREDICTIVE CAPABILITY WHEN APPLIED TO A SPECIFIC SET OF FACTUAL CIRCUMSTANCES. THE SERVICES, INCLUDING ANY SIMULATIONS, ARE PROVIDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY. YOU MAY NOT USE OR RELY ON THE SERVICES, INCLUDING ANY SIMULATIONS, IN SITUATIONS WHERE PERSONAL INJURY, DEATH OR PROPERTY DAMAGE MAY OCCUR.

10. LIMITATION OF LIABILITY.

IN NO EVENT SHALL WE OR ANY OF OUR AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR USE OF, DELAY IN USING, OR INABILITY TO USE THE SERVICES, INCLUDING ANY SIMULATIONS. OUR LIABILITY FOR ANY DIRECT DAMAGES SHALL BE LIMITED TO THE AMOUNT OF FEES YOU HAVE PAID FOR THE SERVICES GIVING RISE TO SUCH LIABILITY.

11. CLASS ACTION WAIVER.

YOU AND WE AGREE THAT ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE IN CONNECTION WITH THE SERVICES, INCLUDING ANY SIMULATION, OR THESE TERMS WILL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS, AND THAT NEITHER YOU NOR WE WILL SEEK TO HAVE ANY DISPUTE HEARD AS A CLASS ACTION, A REPRESENTATIVE ACTION, A COLLECTIVE ACTION, A PRIVATE ATTORNEY-GENERAL ACTION, OR IN ANY PROCEEDING IN WHICH YOU OR WE ACT OR PROPOSE TO ACT IN A REPRESENTATIVE CAPACITY, AND THAT NO SUCH PROCEEDINGS WILL BE JOINED, CONSOLIDATED, OR COMBINED WITH ANOTHER PROCEEDING WITHOUT THE PRIOR WRITTEN CONSENT OF YOU, US, AND ANY OTHER PARTIES TO ANY SUCH PROCEEDING.

## 12. EXPORT CONTROLS.

You acknowledge that the laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin. You agree that you will not export or re-export any of the Services, including any Simulation, in violation of the laws of the United States or any foreign jurisdiction. You represent and warrant that you are not (a) a national or resident of any country to which the United States has embargoed goods, or (b) on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial and Prohibition Orders. You agree to comply with all export and import laws and restrictions and regulations of the United States or any foreign nation, and not to export, re-export or import SimsUShare or any Simulation in violation of such restrictions, laws or regulations.

## 13. PRIVACY.

Your use of the Services is subject to our privacy policy, the provisions of which are incorporated into these Terms by this reference. By using any of the Services, you acknowledge and consent to our collection, storage, sharing and use of information as set forth in the privacy policy.

## 14. COMMUNICATIONS.

From time to time, we may send out email communication to inform customers about news, updates, and new features or products. By accepting these Terms, you grant us permission to contact you in this capacity. However, all such emails that we send will include a means for you to "opt out," meaning decline any further communication. In addition, you may notify us as provided at the end of these Terms of your opt out request. We will process any opt out request within 10 business days.

## 15. DIGITAL MILLENNIUM COPYRIGHT ACT.

If you believe that our Services, including any content made available by means of our Services, infringes on your copyright, please forward the following information to:

Jeremy Pomeroy, Esq.  
Pomeroy Law Group PLLC

54 W. 40th Street  
New York, NY 10018

Email: [jeremy@pomeroylawgroup.com](mailto:jeremy@pomeroylawgroup.com)

- Your address, telephone number, and email address;
- A description of the copyrighted work that you claim has been infringed;
- A description of where the alleged infringing material is located;
- A statement by you that you have a good faith belief that the disputed use is not authorized by you, the copyright owner, its agent, or the law;
- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; and
- A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Our policy is to ban repeat infringers from using our Services.

#### 16. MISCELLANEOUS.

(a) Termination. Either you or we may terminate these Terms at any time; however, all of the provisions hereof, except for the license grants set forth in paragraph 3(a) above, shall survive such termination. If we terminate these terms for reasons other than your breach, we will provide you with a pro rata refund of any amounts that you prepaid for your subscription. If we believe at any time, in our sole discretion, that your use of the Services or a Simulation breaches any provision of these Terms or could give rise to legal liability, we have the right to require that you cease to use the Services and/or the applicable Simulation.

(b) Modifications. We may modify these Terms at any time by posting changes on the Services or otherwise notifying you; however, (i) these changes will only become effective and binding after you first use any the Services following the date of such posting or notification, and (ii) any change in payment obligations will only apply to your subsequent purchases on, or usage of, the Services. If at any time you find these Terms unacceptable and do not agree with them, you thereafter will have no right to use or access the Sites or Services.

(c) Relationship. No joint venture, partnership, employment or agency relationship exists between you and us as a result these Terms or your use of the Services.

(d) Entire Agreement. These Terms represent the entire agreement between you and us with respect to the subject matter hereof, and supersede any and all



prior understandings, statements or representations, whether electronic, oral or written, regarding the Services.

(e) Assignment and Waiver. We may assign these Terms at our discretion. You may not assign these Terms without our prior written consent. No waiver of any obligation or right of either party shall be effective unless in writing, executed by the party against whom it is being enforced.

(f) Law and Jurisdiction. These Terms shall be governed by the laws of the United States of America and the Commonwealth of Pennsylvania, without regard to conflict of laws rules, and you hereby give your consent to have any action or dispute between you and us resolved exclusively within the jurisdiction of the state or federal courts located in the City of Philadelphia, in the Commonwealth of Pennsylvania.

(g) Equitable Relief. In addition to money damages, we shall be entitled to seek equitable relief where appropriate if you breach these Terms.

(h) Severability. The terms and conditions of these Terms are severable and may be construed to the extent of their enforceability in light of the parties' mutual intent.

(i) Construction. The titles and subtitles in these Terms are used for convenience only and are not to be considered in construing it. First person plural references herein such as "us," "we" and "our" refer to Equipment Simulations LLC. Words such as "include" or "including" herein mean "include without limitation" or "including without limitation," respectively.

(j) Notices. Notices to us (other than those regarding copyright infringement, which should be sent as provided above) should be sent by email to [Notices@SimsUshare.com](mailto:Notices@SimsUshare.com) or by mail to:

Equipment Simulations LLC

Attn: Frank Lipski

13 Alice Dr

Highland, IL 62249