

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM496213

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
SEQUENCE:	1		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Amy Cowperthwait		02/27/2017	INDIVIDUAL: UNITED STATES
RECEIVING PARTY DATA			
Name:	Simulab		
Street Address:	13001 48th Avenue South		
City:	Tukwila		
State/Country:	WASHINGTON		
Postal Code:	98168		
Entity Type:	Corporation: WASHINGTON		
PROPERTY NUMBERS Total: 7			
Property Type	Number	Word Mark	
Serial Number:	86860362	SIMUCARE	
Serial Number:	86929216	SIMUGEAR	
Serial Number:	86929282	SIMUSTICK	
Serial Number:	86929240	SIMUTECH	
Serial Number:	86929257	SIMUTRACH	
Registration Number:	4961599	SIMUCARE	
Serial Number:	86929270	SIMUCATH	
CORRESPONDENCE DATA			
Fax Number:	2536817667		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	2062971260		
Email:	ktaylor@simulab.com		
Correspondent Name:	Karen Taylor		
Address Line 1:	13001 48th Avenue South		
Address Line 4:	Tukwila, WASHINGTON 98168		
NAME OF SUBMITTER:	Douglas J Beighle		
SIGNATURE:	/Douglas J Beighle/		

OP \$190.00 86860362

DATE SIGNED:	10/31/2018
---------------------	------------

Total Attachments: 6

source=Trademark Settlement Agreement Simulab Simucare 022717#page1.tif

source=Trademark Settlement Agreement Simulab Simucare 022717#page2.tif

source=Trademark Settlement Agreement Simulab Simucare 022717#page3.tif

source=Trademark Settlement Agreement Simulab Simucare 022717#page4.tif

source=Trademark Settlement Agreement Simulab Simucare 022717#page5.tif

source=Trademark Settlement Agreement Simulab Simucare 022717#page8.tif

Confidential Trademark Settlement Agreement

This Trademark Settlement Agreement (the "Agreement"), effective as of the latter date of execution below, is made by and between Simulab Corporation ("Simulab"), a corporation with a business address of 13001 48th Ave., S, Seattle, Washington 98168, SimUCare, Inc. ("SimUCare"), a corporation with a business address of 113 J and M Drive, New Castle, DE 19702, and Amy Cowperthwait, Chief Executive Officer of SimUCare. Simulab, SimUCare, and Ms. Cowperthwait are referred to collectively as "the Parties."

WHEREAS, Simulab has developed and manufactured medical simulators and task trainers for the medical education community under the SIMULAB brand name since 1994.

WHEREAS, Simulab is the owner of U.S. Registration No. 2,301,913 for the mark SIMULAB in International Class 010 for use in connection with "surgical training devices, namely, simulated tissue, organs and anatomic structure, simulated bones and connective tissue, simulated tissue structure for suturing, and endoscopic surgical training platforms."

WHEREAS, Simulab has filed Application Serial No. 86/907,833 for the mark SIMUWEAR in International Class 010 for "apparatus for physical training for medical use."

WHEREAS, SimUCare has developed and is working to manufacture wearable medical simulation devices for the medical community under the SIMUCARE brand name.

WHEREAS, SimUCare is the owner of U.S. Registration No. 4,961,599 for the mark SIMUCARE in International Class 009 for "medical teaching mannequins." SimUCare has also filed Application Serial Nos. 86/929,282 (SIMUSTICK), 86/929,270 (SIMUCATH), 86/929,257 (SIMUTRACH), 86/929,240 (SIMUTECH), 86/929,216 (SIMUGEAR) and 86/860,362 (SIMUCARE), all in International Class 010. The marks associated with the registration and applications cited in this paragraph are referred to herein as the "SimUCare Domestic Marks."

WHEREAS, Simulab has filed Cancellation No. 92064128 and Opposition Nos. 91229168, 91229167, 91229166 and 91229165 at the U.S. Patent and Trademark Office ("USPTO") against the SimUCare Domestic Marks.

WHEREAS, SimUCare is the owner of Canadian Trademark Application No. 1,761,465 for the mark SIMUCARE (the "Canadian Mark"); and Amy Cowperthwait is the owner of International Registration No. 1285813 for the mark SIMUCARE (the "International Mark").

WHEREAS, SimUCare has requested and was granted two (2) Extensions of Time to oppose Simulab's Application Serial No. 86/907,833 for the mark SIMUWEAR.

WHEREAS, the Parties wish to resolve all disputes regarding their respective trademarks,

NOW THEREFORE, for good and valuable consideration as set forth herein, the receipt and sufficiency of which is hereby acknowledged by the Parties, it is **AGREED** as follows:

1. All the foregoing prefatory clauses are incorporated by reference herein and made a part of this Agreement.
2. SimUCare and Ms. Cowperthwait hereby assign to Simulab all of their respective rights, title and interest in and to the SimUCare Domestic Marks, the Canadian Mark, and the International Mark, and all goodwill associated therewith. Within ten (10) business days of the execution of this Agreement, SimUCare or Ms. Cowperthwait shall record copies of the Trademark Assignment document attached hereto as Exhibit A with the USPTO, and with any international or other trademark registrar, for each registration and application and agree to execute such further instruments as may be necessary to affect the full transfer of ownership of the SimUCare and Ms. Cowperthwait Domestic Marks, the Canadian Mark, and the International Mark to Simulab.
3. SimUCare and Ms. Cowperthwait represent and warrant that they have not made any agreements to transfer the SimUCare Domestic Marks, the Canadian Mark, or the International Mark to any third party, that the assignment of those Marks to Simulab does not violate the rights of any third party, that SimUCare and Ms. Cowperthwait have full authority to enter this Agreement and that the Marks discussed in this Paragraph are assigned to Simulab free from any lien or encumbrance.
4. Simulab agrees that it will not use in commerce any of the SimUCare Domestic Marks, the Canadian Mark, the International Mark in a manner that will interfere with SimUCare's transitional branding, for a period of at least five (5) years from the date of this Agreement. Simulab shall ensure that its use of the SimuUCare Domestic Marks, the Canadian Mark, and the International Mark does not result in any business or reputational harm to SimuCare or Ms. Cowperthwait. In the event that SimUCare files for bankruptcy or otherwise ceases to operate in the medical simulation industry, the 5 year limitation noted in this paragraph 4 shall be deemed null and unenforceable 6 months following such public notice of bankruptcy or intent to exit the medical simulation industry.
5. Simulab hereby releases and waives any and all legal claims against SimUCare, and holds SimUCare harmless, for its use of the Domestic Marks, the Canadian Mark, the International Mark, and any other mark using the prefix "SIMU," regardless of whether such use was in commerce or otherwise.
6. Within ten business (10) days of the filing of the assignment document in Exhibit A with the United States Patent and Trademark Office as required by paragraph 8(a) of this Agreement, Simulab shall file the appropriate papers and/or notifications with the Trademark Trial and Appeal Board to dismiss each of the Opposition and Cancellation proceedings against the SimUCare Domestic Marks with prejudice.
7. Within 6 months from the execution of this Agreement, SimUcare shall change its corporate name and shall have discontinued use of any trademarks, service marks, trade names or other source identifiers that include the prefix "SIMU" or any substantially identical variant thereof, including, without limitation, the use of such prefix in connection with its trademarks, service marks, trade names or other source identifiers within website urls and hidden website tagging and metadata. Nothing in this Agreement shall be construed to prevent SimUCare from using the prefix "SIMU" on its website, urls, hidden website tagging, or otherwise, to describe the functionality of its goods or services (e.g., "simulation devices"). SimUCare further agrees not to begin using any new marks that include the prefix

“SIMU” or any confusingly similar variant thereof.

8. Simulab agrees to pay SimUCare \$23,000 on the following payment terms:
 - a. \$11,500 upon recordation of this assignment with the USPTO for each of the SimUCare Domestic Marks; and
 - b. \$11,500 upon receipt of a letter from SimUCare’s president or chief operating officer, certifying that SimUCare has discontinued all use of the SimUCare Marks in accordance with Section 7 above.

9. SimUCare agrees that it will not seek any further Extensions of Time to oppose Simulab’s Application Serial No. 86/907,833 and will not pursue any claims or action against Simulab, either at the Trademark Trial and Appeal Board, or in any federal district court action, based on Simulab’s use of any of the SimUCare Domestic Marks, the Canadian Mark, or the International Mark that have been assigned to Simulab or any additional marks Simulab may use or seek to register on the basis of such marks including the prefix “SIMU.” Nothing in this Paragraph shall be construed to limit Simulab’s obligation under Paragraph 4, which prohibits Simulab from using in commerce the SimUCare Domestic Marks, the Canadian Mark, and the International Mark, in a manner that will interfere with SimUCare’s transitional branding = for a period of at least five (5) years from the date of this Agreement.

10. The Parties and their counsel agree that they will forever keep the terms of this Agreement confidential, except as otherwise provided herein, unless required by lawful process or judicial demand to do otherwise. Nothing in the confidentiality requirement of this paragraph shall prevent the Parties or their attorneys from disclosing the terms of this Agreement to their own attorneys, insurance agents, accounting, financial, or administrative personnel to enable those persons to provide professional services. Notwithstanding the foregoing, the Parties each agree that the other may state publicly regarding the dispute that the Parties “reached a mutually amicable resolution.”

11. SimUCare shall have the option, but is not required, to obtain Simulab’s approval regarding SimUCare’s proposed new corporate brand and associated trademarks to be used in connection with its goods and/or services. SimUCare’s request for approval shall be made in writing to Simulab, which may include a request by email. Upon receipt of such a request from SimUCare, Simulab shall provide a written response as to whether it approves SimUCare’s use and registration of its proposed corporate brand and/or associated trademarks within ten (10) business days. To the extent Simulab approves a proposed corporate brand and/or associated trademark, such an approval shall constitute a waiver by Simulab as to any claims to oppose or cancel such mark, to claim infringement or dilution based on such mark, or to bring any other action in law or equity based on the use or registration of such mark. Simulab agrees that it will not unreasonably withhold approval of SimUCare’s uncontested use and registration of its proposed corporate brand and associated trademarks to be used in connection with its goods and services. SimUCare shall be permitted to lodge a plurality of the foregoing approval requests, and Simulab shall respond to each request within ten (10) business days.

12. The Parties agree that this Agreement is subject to Federal Rule of Evidence 408, and is not admissible in any future action to prove the validity or invalidity of any mark of the Parties. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties. Neither this Agreement nor any document referred to in this Settlement Agreement nor any action

taken to carry out this Settlement Agreement is or may be construed as or may be used against any Party as an admission or concession on any point of fact or law, of any alleged fault, wrongdoing or liability whatsoever.

13. Each of the Parties agrees that it shall not publicly or privately disparage the others or the agents, servants or employees of the others, but rather shall act in good faith to refrain from any conduct or communication which might reasonably be expected to interfere with the business interests of the others.

14. This Agreement shall be binding upon and inure to the benefit of the undersigned and their respective successors and assigns.

15. This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof. There are no other agreements, understandings, representations or conditions, express or implied, oral or written, with regard to the subject matter of this Agreement. This Agreement may not be modified or amended other than by an agreement in writing signed by the Parties.

16. The Parties do not intend to create a joint venture, partnership, or any other business relationship by this Agreement, and in no event will SimUCare or Ms. Cowperthwait represent to any third party that it is Simulab's agent for any purpose, and vice versa.

17. Each party warrants and represents that it has the capacity and right to enter into this Agreement; that it has not assigned or otherwise transferred in any manner rights or duties which would relieve it from fulfilling the terms hereof; that it intends to be bound by the terms of this Agreement; that this Agreement was fully negotiated by the Parties and that none of the provisions hereof is to be considered as having been drafted by a particular party; and that it consents to the terms and conditions of this Agreement.

18. In the event of a dispute over this Agreement between the Parties, this Agreement shall be governed by the laws of the state of the filing party without reference to or application of principles of choice of law. The Parties agree that any legal action between the Parties relating to the entry into or performance of this Agreement or any ancillary agreement, or the interpretation or enforcement of the terms hereof or thereof, shall exclusively be brought in a federal or state court located in the state of the filing party, having jurisdiction of the subject matter thereof, and each party irrevocably consents to personal jurisdiction in any such federal or state court, waives any right to object to such venue or to assert the defense of forum non-conveniens.

19. Each party to this Agreement shall bear its own costs, expenses, and attorneys' fees incurred in or arising out of the negotiation, preparation, execution and implementation of this Agreement; provided however, that in any action, proceeding or arbitration under or with respect to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

20. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one in the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the dates set forth below.


Simulab Corporation

By: 

Print Name/Title: President & COO

Date: 2/27/2017

SimUCare, Inc. / Amy Cowperthwait

By: 

Print Name/Title: Amy Cowperthwait CEO

Date: 2/24/2017

APPENDIX A

MARK	SERIAL/REG. NO.	FILING DATE
SIMUCARE	U.S. Reg. No. 4961599	June 30, 2015
SIMUCARE	Int'l Reg. No. 1285813	December 28, 2015
SIMUCARE	Canadian Trademark App. No. 1,761,465	December 29, 2015
SIMUCARE	Serial No. 86860362	December 29, 2015
SIMUSTICK	Serial No. 86929282	March 4, 2016
SIMUCATH	Serial No. 86929270	March 4, 2016
SIMUTRACH	Serial No. 86929257	March 4, 2016
SIMUTECH	Serial No. 86929240	March 4, 2016
SIMUGEAR	Serial No. 86929216	March 4, 2016