



Contract Number
20-163

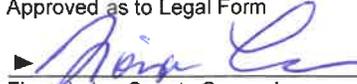
SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Contractor	National Comprehensive Cancer Network
Contractor Representative	Mark Dubar
Telephone Number	(661) 400-1601
Contract Term	April 7, 2020 to April 6, 2025
Original Contract Amount	\$89,514.93
Amendment Amount	
Total Contract Amount	\$89,514.93
Cost Center	8241 – IM / EPIC

Briefly describe the general nature of the contract: Approve License Agreement with the National Comprehensive Cancer Network for EPIC customers to access evidence-based treatment guidelines for cancer patients in the amount of \$89,514.93 for the five-year period of April 7, 2020 through April 6, 2025.

FOR COUNTY USE ONLY

Approved as to Legal Form 	Reviewed for Contract Compliance _____ ▶	Reviewed/Approved by Department 
Fiona Luke, County Counsel Date <i>March 30, 2020</i>	Date _____	William L. Gilbert, Director Date <i>3/26/2020</i>

NCCN EPIC CUSTOMER License Agreement

This NCCN Epic Customer License Agreement (the “Agreement”) is effective as of April 7, 2020 (“Effective Date”), and is made by the undersigned person or entity (“Licensee”) and the National Comprehensive Cancer Network, Inc. (“NCCN”), 3025 Chemical Road, Suite 100, Plymouth Meeting, PA 19462.

By accepting these terms or by viewing, accessing or otherwise using or providing access to any NCCN Content (as defined below), you (also referred to herein as “Licensee”) agree to be bound by this Agreement. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU, AND YOUR AUTHORIZED END USERS (“USERS”), MAY NOT VIEW, ACCESS OR USE ANY NCCN CONTENT IN ANY MANNER.

Recital

NCCN has developed content regarding the currently accepted approaches to cancer treatment, including without limitation, the NCCN Clinical Practice Guidelines in Oncology (“NCCN Guidelines[®]”), the NCCN Guidelines for Patients[®], NCCN Imaging Appropriate Use Criteria[™] (“NCCN Imaging AUC[™]”), the NCCN Drugs and Biologics Compendium (“NCCN Compendium[®]”), the NCCN Biomarkers Compendium[®], the NCCN Imaging Appropriate Use Criteria Compendium[™], the NCCN Imaging AUC Compendium[™], the NCCN Radiation Therapy Compendium[™], the NCCN Chemotherapy Order Templates (“NCCN Templates[®]”), the NCCN Guidelines with NCCN Evidence Blocks[™], the NCCN Flash Updates[™] and the NCCN Framework for the Resource Stratification of the NCCN Guidelines[™] (“NCCN Framework[™]”), NCCN Harmonized Guidelines[™] collectively referred to as the “NCCN Content”. Subject to the terms and conditions of this Agreement, Licensee desires to license certain NCCN Content and NCCN desires to grant Licensee a license to such NCCN Content;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the parties agree as follows:

1. **Grant of License.** Subject to the terms and conditions of this Agreement, NCCN hereby grants to Licensee, solely for use by Arrowhead Regional Medical Center, including its hospital and all satellite clinics, a revocable, non-transferable, non-exclusive, limited license for each User to use the NCCN Templates[®] and related NCCN Guidelines[®] (the “Permitted NCCN Content”), solely for such User’s own personal purposes, solely as a reference or as integrated into the Beacon medical oncology platform (the “Beacon Service”) provided by Epic.
2. **Restrictions on Use.**
 - 2.1. **General.** Any use of any NCCN Content beyond or in addition to that expressly stated in this Agreement shall require the prior written approval of NCCN (which NCCN may grant or refuse in its sole discretion). Except to the extent otherwise expressly set forth in this Agreement, Licensee (and each User) may not copy, transfer, reproduce, modify or create derivative works of any part of any NCCN Content for any reason. If a User is a not an employee or contractor of Licensee, the User must agree in writing to be bound

number of Annual Oncology Visits selected when you enter this Agreement. Except as set forth in Schedule A, all Fees shall be due and payable by Licensee to NCCN within forty-five (45) days of receipt of invoice and are non-refundable under applicable provisions of section 7.2, herein. Payment must be made by wire transfer or as otherwise directed by NCCN. NCCN reserves the right to suspend Licensee's (and any User's) rights to use the NCCN Content, in the event that any payments to NCCN are past due.

5.2. **Taxes.** The Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Licensee shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on NCCN's net income. If NCCN has the legal obligation to pay or collect taxes for which Licensee is responsible, the appropriate amount shall be invoiced to and paid by Licensee unless Licensee provides NCCN with a valid tax exemption certificate authorized by the appropriate taxing authority.

6. **Intellectual Property Rights.**

6.1 **General.** Licensee acknowledges that NCCN or its licensors, as applicable, own all right, title and interest in and to the NCCN Content, including, without limitation, all modifications, updates and other derivative works thereof, all copyright and other intellectual property rights related thereto, and all rights in and to the NCCN Content included in the Beacon Service. Licensee shall have no right to utilize the NCCN Content except for the limited rights expressly set forth in this Agreement, Licensee hereby agrees that Licensee shall not at any time dispute, challenge, or contest, directly or indirectly, NCCN's right, title and interest in and to the NCCN Content or the NCCN Content included in the Beacon Service, or assist or aid others to do so. Licensee will sign and deliver such additional documentation as NCCN may reasonably request confirming the NCCN's ownership of the NCCN Content or NCCN Content included in the Beacon Service. Any and all rights not expressly granted to Licensee under this Agreement shall be owned and retained by NCCN or its licensors, if applicable. For purposes of clarification, the parties agree NCCN does not own the Beacon Service but does own any Licensed NCCN Content used in the development of, or distributed with any Beacon Service.

6.2 **Trademarks.** Licensee recognizes that NATIONAL COMPREHENSIVE CANCER NETWORK®, NCCN®, NCCN GUIDELINES®, NCCN EVIDENCE BLOCKS™, NCCN COMPENDIUM®, NCCN IMAGING AUC™, NCCN IMAGING AUC COMPENDIUM™, NCCN RADIATION THERAPY COMPENDIUM™, NCCN TEMPLATES®, NCCN FRAMEWORK™, NCCN HARMONIZED GUIDELINES™, NCCN Guidelines for Patients®, NCCN Biomarkers Compendium®, and GUST™ are trademarks ("Marks") of the National Comprehensive Cancer Network, Inc. and that NCCN retains all goodwill and intellectual property rights in such Marks. Licensee (and each User) shall not use the Marks or any confusingly similar Marks for any purpose, except as permitted hereunder, without the prior written approval of NCCN, which approval may be withheld in NCCN's sole discretion. Each approved use of the Marks shall require the independent written approval of NCCN.

6.3 **Confidential Information.** This Agreement is subject 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 6250) (collectively, "Regulations"). All information, including detailed price and cost information, is

trade secrets and Confidential Information of NCCN and will continue to do so unless and until instructed otherwise by NCCN.

9. **Restrictions; Disclaimers; Limitation on Damages.**

9.1 **General.** The NCCN Guidelines[®] are a statement of consensus of the authors regarding their views of currently accepted approaches to cancer treatment. The recommendations regarding the uses and indications in the NCCN FLASH UPDATES[™], NCCN Compendium[®], the NCCN Framework[™], and the NCCN Guidelines for Patients[®] have been derived directly from the NCCN Guidelines[®]. The NCCN Compendium[®] neither represents an all-inclusive listing of every drug and biologic nor every appropriate use and indication for drugs and biologics. The NCCN Templates[®] are peer reviewed statements of consensus of their authors derived from the NCCN Guidelines[®] for the conditions the NCCN Templates[®] address. The NCCN Templates[®] are not exhaustive and do not represent the full spectrum of care or treatment options described in the NCCN Guidelines[®] or the NCCN Compendium[®] or include all appropriate approaches or combinations of drugs or biologics for the treatment of cancer. A NCCN Template does not constitute an order.

9.2 **No Representations or Warranties.** NCCN makes no representations or warranties and explicitly disclaims the appropriateness or applicability of any NCCN Content to any specific patient's care or treatment. Any clinician seeking to treat a patient using any NCCN Content is expected to use independent medical judgment in the context of individual clinical circumstances of a specific patient's care or treatment.

9.3 **DISCLAIMER OF WARRANTIES.** NCCN MAKES NO WARRANTIES CONCERNING ANY NCCN CONTENT, WHICH IS PROVIDED "AS IS." NCCN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. NCCN DOES NOT WARRANT THE ACCURACY, CURRENCY APPROPRIATENESS, APPLICABILITY OR COMPLETENESS OF ANY NCCN CONTENT, NOR OF ANY PARTICULAR GUIDELINE OR TEMPLATE, NOR DOES NCCN MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF ANY NCCN CONTENT IN TREATMENT.

9.4 **LIMITATIONS OF LIABILITY.** EXCEPT FOR CLAIMS SUBJECT TO NCCN'S INDEMNIFICATION OBLIGATIONS, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR VIOLATIONS OF LAW, NCCN'S LIABILITY TO LICENSEE FOR DIRECT DAMAGES SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES NCCN HAS RECEIVED FROM LICENSEE UNDER THIS AGREEMENT. EXCEPT FOR LICENSEE'S VIOLATION OF THE INTELLECTUAL PROPERTY OWNERSHIP AND/OR USE RESTRICTIONS SET FORTH HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE LICENSE GRANTED UNDER THIS AGREEMENT OR USE OF THE NCCN CONTENT, INCLUDING, WITHOUT LIMITATION, LOSS OF LIFE, PHYSICAL INJURY, PROPERTY DAMAGE, LOSS OF DATA, LOSS OF INCOME OR PROFIT, OR ANY OTHER DAMAGES, LOSSES OR CLAIMS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR CLAIMS.

11.4 **Entire Agreement; Waiver and Amendment; Severability.** This Agreement constitutes the entire agreement between NCCN and Licensee with respect to the subject matter. Either party's failure to enforce any provision of this Agreement will not be construed as a waiver of any provision or right. Waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder will not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right unless such waiver is in writing and signed by the party against whom enforcement of such waiver is sought. No amendment or modification hereof will be valid or binding upon either party unless made in writing and duly signed by both parties. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby. Upon any conflict between this Agreement and Schedule A hereto, the terms of this Agreement shall control.

11.5 **Remedies for Violation.** NCCN reserves the right to seek all remedies available at law and in equity for violations of this Agreement, including, but not limited to, the right to withdraw or deny access to any NCCN Content and the right to seek injunctive relief.

11.6 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California without giving any effect to the conflict of law provisions thereof. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is expressly excluded.

11.8 **Export.** Licensee agrees that the NCCN Content will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act, or any other export laws or restrictions.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute and deliver this Agreement as of the Effective Date.

**NATIONAL COMPREHENSIVE
CANCER NETWORK, INC.**

DocuSigned by:
By: C. Lyn Fitzgerald
7D0137D1F8EB480...
Name: C. Lyn Fitzgerald
Title: SR VP, U.S. & Global Development
Date: 3/27/2020 | 12:16 PM EDT

Address: 3025 Chemical Road, Suite 100
Plymouth Meeting, PA 19462
Tel: 215-690-0300
Fax: 215-690-0283

DB1/ 113089356.1

**COUNTY OF SAN BERNARDINO on
behalf of ARROWHEAD REGIONAL
MEDICAL CENTER**

By: Curt Hagman
Name: Curt Hagman
Title: Chairman, Board of Supervisors
Date: APR 07 2020

Address: 400 N Pepper Ave,
Colton, CA 92324
Tel: 909-580-2603

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNNA MONELL
Clerk of the Board of Supervisors
of the County of San Bernardino

By: _____
Deputy



SCHEDULE B

Acknowledgement of Terms of NCCN Epic Customer License Agreement

The undersigned ("User") hereby acknowledges that User has reviewed the terms of that certain NCCN Epic Customer License Agreement (the "Agreement"), dated as of April 7, 2020, by and between the National Comprehensive Cancer Network, Inc. ("NCCN") and the County of San Bernardino ("Licensee").

User hereby agrees that, in consideration of User's use of NCCN Content (as defined in the Agreement) in accordance with the terms of the Agreement, User shall be bound by the terms and conditions of the Agreement to the same extent by which Licensee is bound.

User: _____

Licensee: County of San Bernardino on behalf of Arrowhead Regional Medical Center

By: _____

By: _____

Name: _____

Name: Curt Hagman

Title: _____

Title: Chairman, Board of Supervisors

Address: _____

Address: 400 North Pepper Ave.
Colton, CA 92324

Tel: _____

Tel: 909-580-6150

Fax: _____

Fax: _____

Date: _____

Date: _____

ACKNOWLEDGED AND AGREED:

National Comprehensive Cancer Network, Inc.

By: _____

Name: C. Lyn Fitzgerald

Title: SVP US & Global Development

Address: 3025 Chemical Road, Suite 100
Plymouth Meeting, PA 19462

Tel: 215-690-0300

Fax: 215-690-0283

Date: _____

Licensee is responsible to return Schedule B completed by email to: EpicRequest@nccn.org