

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

March 15, 2022

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Epic Systems Corporation Upload Request Form

RECOMMENDATION(S)

1. Approve the non-financial Upload Request Form template from Epic Hosting, LLC, a division of Epic Systems Corporation, with non-standard terms, for the loading of third-party software or content to the Epic Hosting Service, and direct the Clerk of the Board of Supervisors to maintain confidentiality of the Upload Request Form in compliance with the confidentiality provision in Contract No. 20-282.
2. Designate the Director of Arrowhead Regional Medical Center as the authorized official to approve and sign the Upload Request Form from Epic Hosting, LLC, a division of Epic Systems Corporation, for the loading of third-party software or content to the Epic Hosting Service.

(Presenter: William L. Gilbert, Director, 580-6150)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost) as the Epic Hosting, LLC, a division of Epic Systems Corporation (Epic), Upload Request Form (URF) is non-financial in nature.

BACKGROUND INFORMATION

On May 19, 2020 (Item No. 19), the Board of Supervisors (Board) approved Agreement No. 20-282 with Epic for the complete hosting of a fully integrated Electronic Health Record system for Arrowhead Regional Medical Center (ARMC). This agreement established a fully certified remote hosting option for the Epic electronic health record with complete backup and disaster recovery capabilities, as required by Centers for Medicare and Medicaid Services Conditions of Participation and enforced by The Joint Commission. Epic provides ARMC with a robust server hardware platform and a certified support services team for the Epic health record software, along with the redundancy and backup systems included in case of an emergency or disaster. ARMC does not currently have the on-site capacity or capability to provide these services.

On July 27, 2021, (Item No. 19), the Board approved the URF template and delegated authority to the ARMC Director to execute the URFs. Epic requested that the County provide a completed URF for each piece of non-Epic software, upgrade, or release in order to load it to the hosting site.

Epic Systems Corporation Upload Request Form
March 15, 2022

Since Board approval on July 27, 2021, Epic has revised the URF, adding additional terms and responsibilities.

The URF is required by Epic to be maintained as Epic's confidential information pursuant to Section 6 of the Epic Hosting, LLC Hosting Services Agreement, County Contract No. 20-282 (Contract), as approved by the Board and executed between the parties.

The URF contains supplemental terms required by Epic, which places additional non-standard responsibilities and obligations on the County in addition to those in the Contract. The non-standard and missing terms include the following:

1. The County agrees to verify and maintain the licenses and approvals necessary for Epic to access and host the third-party software that ARMC uploads to the hosting service.
 - There is no equivalent County standard.
 - Potential Impact: If the County fails to verify and maintain a license for any third-party software that is uploaded under this form, the County will be liable to both Epic and the third-party software provider for any costs associated with failing to maintain the license.
2. The County accepts all risks and costs associated with uploading third-party software to the Epic hosting service, including claims arising from uploading the third-party software, charges for security issues caused by uploading the third-party software, any impact on performance, scalability, or availability of the Epic hosting services, and charges for additional hardware, storage, licenses or other infrastructure required to upload the third-party software.
 - There is no equivalent County standard.
 - Potential Impact: The County could incur unexpected financial liability and additional operational costs. In addition, nearly all third-party software licenses include a limitation of liability to the County. To the extent that the third-party software licensor's liability is limited, the County will be liable for any financial liability above the third-party licensor's limit incurred as a result of uploading the third party software to the Epic hosting service.
3. Epic disclaims all liability for loss of, unavailability of, or damage to the third-party software uploaded by ARMC.
 - There is no limitation of liability in the County standard contract.
 - Potential Impact: All risk of loss resulting from the County's inability to use, loss of or damage to the third-party software, is at the County's sole risk of loss.
4. The form requires the County to provide Epic with installers, install directions, configurations files and updates necessary to deploy and maintain the third-party software and confirm with the licensor that Epic can deploy the software on the County's behalf.
 - There is no equivalent County standard.
 - Potential Impact: If ARMC fails to obtain approval from the third party software licensors to provide Epic with installers, install directions, configurations files and updates, the County could be liable for intellectual property infringement from the third-party software provider.

**Epic Systems Corporation Upload Request Form
March 15, 2022**

Epic Hosting requires an URF for each third-party software loaded onto the hosting site. As the build for ARMC is ongoing and software will need to be added as required, it is requested that the Board approve the Director of ARMC to sign a completed URF for each piece of software. The ability to add the necessary software as needed in order to establish the new Electronic Health Record system will help provide for the safety, health and social service needs of county residents.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on January 25, 2022; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on February 23, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer) on February 25, 2022.

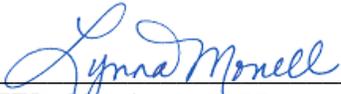
Epic Systems Corporation Upload Request Form
March 15, 2022

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Janice Rutherford Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 15, 2022



cc: File- Confidential w/attach
LA 03/17/2022