



Contract Number

21864

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative
Telephone Number

William L. Gilbert
(909) 580-6150

Contractor
Contractor Representative
Telephone Number
Contract Term

Epic Systems Corporation
Madalina Muresan-Popovici
(608) 271-9000
November 16, 2021, through
November 15, 2022, automatic
annual renewal

Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

8483

Briefly describe the general nature of the contract:

Non-financial App Orchard Recipient Agreement with Epic Systems Corporation, including non-standard terms, for access to and use of materials published on the App Orchard website, for a period of one year, from November 16, 2021, through November 15, 2022, automatically renewing on an annual basis.

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*
Bonnie Uphold, County Counsel

Date 11-9-2021

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► *William L. Gilbert*
William L. Gilbert

Date 11/9/21



Recipient Agreement

Last Revised: September 18, 2020

1 WELCOME TO APP ORCHARD

App Orchard is an app developer program and online app gallery. The purpose of App Orchard is to provide health IT and content vendors with technology, tools, and support to assist them in their efforts to develop, test, deploy, and support products capable of interoperating with Epic Software, and to enable the Epic Community to better identify, license, and use such products.

The App Orchard website will permit You to connect with Contributors, and once You have signed an App License Agreement with a Contributor to use their App, to receive license keys from Epic that will permit You to use Apps in Your Epic environment. You may also license Epic Provided Materials and Epic Services via App Orchard. The definitions on Appendix A apply to this Agreement.

2 USING APP ORCHARD

The Program Details and other documentation provided by Epic provide more information about how to connect with a Contributor, and how to begin using Apps in Your Epic system. Epic is providing You access to App Orchard only to connect You with Contributors, and is not providing You with a license to any App. Epic is not currently a party to any App License Agreement, and therefore You understand that any App that You license is controlled by an App License Agreement between You and a Contributor. The Contributor is solely responsible for any content, warranty or Claims that You may have in relation to a licensed App.

Epic may modify this Agreement or the Program Details at any time. Your use of App Orchard is subject to the then-current version of this Agreement and Program Details. Your continued use of the App Orchard constitutes acceptance of the same. If You do not comply with any updated version of the Agreement, Epic may terminate Your access to App Orchard, or terminate this Agreement, at Epic's discretion.

Epic may offer Epic Provided Materials on App Orchard from time to time. Your use of any Epic Provided Materials will be subject to a Standalone License. In the event that there is a conflict in terms between this Recipient Agreement and any Standalone License agreement, the terms of the Standalone License agreement will govern.

Epic may offer You Epic Services to assist You in developing, testing, deploying, and supporting Apps. Available Epic Services are described in the Program Details. Some Epic Services (e.g., the API gateway service) may involve the use of third-party products or services and/or products or services provided over the internet. Epic does not guarantee that (a) the provision of Epic Services will be uninterrupted or error free, or that Epic will correct any associated errors, (b) Epic Services will operate in connection with any specific App, or (c) Epic Services will meet Your requirements, specifications, or expectations. You acknowledge and agree that certain Epic Services will be subject to limitations inherent in the use of the internet, that Epic does not control the transfer of data over the internet, and that Epic is not responsible for any delays, delivery failures or other damage resulting from such problems, including any problems or damages of any kind that arise from any of Your acts or omissions, or Your App.

3 YOUR RESPONSIBILITIES

As between You and Epic, You are solely responsible for Your licensing and use of any App. The fact that Epic may have reviewed or approved an App for listing on App Orchard or for distribution to the Epic Community does not relieve You of any of these obligations. Epic's review or approval for distribution of any App is not intended to serve as quality assurance of an App or to verify any functionality of an App. Epic is not responsible for any costs, damages, expenses or losses, including lost business opportunities or lost profits, or any other liabilities You may incur related to Your use of App Orchard, Epic Services, or Apps obtained from App Orchard Contributors, including any use of Epic Services in connection with those Apps. Epic hereby disclaims all liability related to Your use of App Orchard and Epic Services, and providing You access to App Orchard or Epic Services does not constitute any representation, warranty, assurance or guarantee by Epic to You.

You are responsible for selecting and reviewing all App functionality and build prior to installing it in Your production environment. You acknowledge that an App may potentially access PHI, content belonging to third parties (including, but not limited to clinical codesets, content, images, patient instructions, video, or other third-party intellectual property), or other information in Your system for which You are responsible. It is Your responsibility to protect such information, and to verify that an App does not cause You to breach any obligation to any third party, including Your patients.

4 INDEMNITY

You agree, unless otherwise prohibited by law, to indemnify and hold Epic and Epic's Indemnitees harmless with respect to any third-party Claims that arise out of or relate to Your acquisition or use of an App or Epic Services, including without limitation any Claims that Your use of

an App or Epic Services infringes any third-party intellectual property or proprietary rights or resulted in a data breach or other unauthorized use of PHI or other data in Your system. If You are a qualified public educational or government institution and You are not able to fulfill Your obligations under this Section because of any local, state or federal law, then You agree that You are fully responsible for any Claims described in the previous sentence, to the fullest extent permitted by law.

5 NO WARRANTY

App Orchard and Epic Services are provided to You AS-IS. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND TITLE, AND ANY IMPLIED WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF APP ORCHARD, OR AGAINST INFRINGEMENT. YOU ACKNOWLEDGE THAT NO EMPLOYEE OF EPIC OR ANY OTHER PARTY IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY RELATED TO APP ORCHARD OR EPIC SERVICES THAT ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.

6 LIMITATION OF LIABILITY

IN NO EVENT WILL EPIC BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT OR RELATING TO APP ORCHARD OR EPIC SERVICES, WHETHER OR NOT EPIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN. UNDER NO CIRCUMSTANCES WILL EPIC BE LIABLE TO YOU FOR ANY REASON FOR ANY AMOUNT IN EXCESS OF FIVE THOUSAND DOLLARS (\$5,000).

7 TERM

The term of this Agreement will be for one (1) year after the date that You executed this Agreement. It will automatically renew for successive one (1) year terms, unless terminated earlier in accordance with this Agreement.

8 TERMINATION

Epic may terminate this Agreement effective immediately upon notice to You in the event of Your breach of this Agreement. Epic, in its sole discretion, may provide You thirty (30) days to cure such breach to Epic's satisfaction.

Either party may terminate this Agreement for its convenience, for any reason or no reason, upon thirty (30) days' written notice to the other party. Upon termination of this Agreement, You agree to make no further use of App Orchard or Epic Services. After termination, You may continue to use all Apps and Epic Provided Materials that You have already licensed; however, You may not acquire or use new or updated Apps or Epic Provided Materials after the effective date of termination.

Termination of this Agreement will have no effect on any license and support agreement You may have with Epic. All terms of the license and support agreement still apply to You and may not be modified except as provided in the license and support agreement.

9 MISCELLANEOUS

A. CHOICE OF LAW; JURISDICTION

The validity, construction and enforcement of this Agreement will be determined in accordance with the governing law set forth in your license and service agreement with Epic. Any action (whether by arbitration or in court) arising under this Agreement will be brought exclusively in Wisconsin. You consent to the personal jurisdiction of the state and federal courts located in Wisconsin.

B. ENTIRE AGREEMENT

This Agreement, including all Appendices attached hereto and all documents specifically referenced herein, is the entire agreement between the parties with regard to accessing the App Orchard as a Recipient for the purpose of receiving an App from a Contributor, and supersedes and incorporates all prior or contemporaneous representations, understandings or agreements, and may not be modified or amended except by an agreement in writing signed between the parties. You represent that the individual executing this Agreement on behalf of You has the authorization to bind You to this Agreement.

10 SURVIVAL

Sections 2, 3-6, and Sections 9-10 of this Agreement will survive termination.

BY CLICKING 'I ACCEPT' BELOW, YOU INDICATE YOUR ACCEPTANCE OF ALL TERMS SET FORTH IN THIS AGREEMENT. THE LICENSE TO ACCESS THE APP ORCHARD WHICH IS PROVIDED TO YOU UNDER THIS AGREEMENT IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF AND COMPLIANCE WITH ALL THE TERMS AND CONDITIONS SET FORTH HEREIN. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT OR DO NOT WISH TO COMPLY WITH ANY TERM OR CONDITION OF THIS AGREEMENT, DO NOT CLICK 'I ACCEPT' BELOW.

Appendix A

DEFINITIONS

Whenever capitalized in this Agreement:

“Affiliated Company or Affiliated Companies” means an entity that (a) directly or indirectly owns or controls more than fifty percent of the applicable party, or (b) is more than fifty percent owned or controlled, directly or indirectly, by the applicable party or an entity described in clause (a).

“App” or “Apps” means any Contributor-created component which uses or references any API or other information that Epic provides to the Contributor under such Contributor’s App Orchard Contributor Agreement. Examples of Apps include standalone desktop, web, or mobile software applications; reports, dashboards, or other analytics products; software, such as web applications, designed to load within an Epic application host; an Epic-specific connector to a stand-alone application or utility; and content designed to run within an Epic application host.

“App License Agreement” means a license You enter into with a Contributor to purchase or otherwise receive an App.

“App Orchard” means the program you are accessing under this Agreement. App Orchard is a website hosted by Epic that assists Contributors in developing Apps that interface with Epic Software and promotes Apps to the Epic Community.

“Claim” means and includes without limitation all claims, demands, actions, liabilities, damages and expenses relating thereto, including, without limitation, settlement costs, and reasonable attorney’s fees.

“Contributors” means any non-Epic third-party entity offering You an App under the terms of App Orchard.

“Epic” means Epic Systems Corporation, a Wisconsin corporation with its principal place of business at 1979 Milky Way, Verona, WI 53593.

“Epic Provided Materials” means any content, software, or other materials marked as such on the App Orchard, licensed to you under a “Standalone License”.

“Epic Services” means any service, including any service described in the Program Details, offered by Epic under this Agreement to assist You in Your efforts to identify, license, and use products capable of interoperating with Epic Software, and to enable Contributors to better develop, test, deploy, and support such products.

“Epic Software” means any computer software licensed or otherwise provided by Epic to any Epic customer.

“Epic Community” means any/all customers of Epic.

“Indemnitees” means the applicable party hereto, its Affiliated Companies, all employees, officers, directors, employees and contractors of the applicable party and its Affiliated Companies. Thus, “Epic Indemnitees” means Epic and each of these persons or entities that are related to Epic.

“PHI” means “protected health information” as defined in 45 CFR § 160.103.

“Program Details” means the details available at <https://apporchard.epic.com/ProgramDetails> and any updates.

“Recipient” means an Epic Community member that wishes to receive an App or has received an App.

“Standalone License” means an agreement to use a specific item of Epic Provide Materials. The Standalone license will be provided to You electronically via the App Orchard. You must agree to the Standalone License in order to receive a key to use any given Epic Provided Materials.

“You” and “Your” means and refers to the Epic customer that has accepted this Agreement to access App Orchard or exercise any other rights under this Agreement.