

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



Contract Number

21.845

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Contractor	Epic Systems Corporation
Contractor Representative	Madalina Muresan-Popovici
Telephone Number	(608) 271-9000
Contract Term	November 16, 2021, through November 15, 2022, automatic annual renewal
Original Contract Amount	\$1,000 annually
Amendment Amount	
Total Contract Amount	\$1,000 annually
Cost Center	8483

Briefly describe the general nature of the contract:

Agreement to Receive Epic Provided Materials with Epic Systems Corporation, including non-standard terms, to license materials provided by the American Joint Committee on Cancer, at a cost of \$1,000 annually, 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

Date 11/9/21

Agreement to Receive Epic Provided Materials (AJCC)

Last Updated: June 2, 2021

Background

You wish for Epic to provide You with a key to permit Your use of the AJCC Cancer Staging System Content (the "Epic Provided Materials") in connection with Your use of the Epic Software. Epic is willing to do so, subject to the terms and conditions provided in this Agreement to Receive Epic Provided Materials (AJCC) (this "Agreement"). All capitalized terms used and not defined in this Agreement have the meanings assigned in the App Orchard Recipient Agreement.

I. LICENSE.

A. General. Subject to the terms and conditions in this Agreement (including any attachments hereto), You are granted a non-exclusive sublicense to use the Epic Provided Materials in the form provided to You in the Epic Software and only to the extent You are licensed to use the Epic Software.

B. Ownership. This is a license and not a transfer of ownership in any of the Epic Provided Materials. As between You and the authors or copyright holders of the Epic Provided Materials, the authors or copyright holders retain all title and ownership rights to the Epic Provided Materials and all intellectual property rights relating to the Epic Provided Materials. You will not alter or remove from the Epic Software any attributions or copyright notice information pertaining to the Epic Provided Materials.

C. Restrictions. You agree not to use the Epic Provided Materials in any closed-loop system that provides medical care without human intervention. You also agree to represent and use the Epic Provided Materials within the Epic Software as received from or demonstrated by Epic, without alteration, addition or modification. The Epic Provided Materials require You to exercise independent, clinical judgment in the delivery of patient care.

II. WARRANTY DISCLAIMER.

THE EPIC PROVIDED MATERIALS ARE PROVIDED AS IS AND WITHOUT WARRANTY OF ANY KIND. ANY AND ALL WARRANTIES, WHETHER EXPRESSED 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 THE EPIC SOFTWARE OR AGAINST INFRINGEMENT. NO EMPLOYEE OF EPIC OR ITS SUPPLIERS OR ANY OTHER PARTY IS AUTHORIZED TO MAKE ANY REPRESENTATIONS OR WARRANTY RELATING TO THE EPIC PROVIDED MATERIALS THAT IS NOT IN THE AGREEMENT OR THIS ADDENDUM.

III. LIMITATIONS OF LIABILITY.

A. Specific Limitations for Epic Provided Materials. For any claim relating to the Epic Provided Materials or services relating thereto, Epic's and its suppliers' cumulative liability to You will not exceed the actual, direct damages incurred by You and will not exceed a maximum of two hundred dollars

(\$200) or the amount actually paid by You to Epic in the previous twelve (12) months for the Epic Provided Materials, whichever is higher.

IV. CONFIDENTIALITY.

You agree to keep the Epic Provided Materials, as represented within the Epic Software, confidential in the same manner that You have agreed to keep the Epic Software confidential.

V. MEDICAL CARE RESPONSIBILITY.

You understand that Epic has not participated in the development of the Epic Provided Materials other than to the extent necessary to build it in the Epic Software. Epic is providing the Epic Provided Materials and license to You for Your convenience. You agree that Epic has no responsibility whatsoever relating to the Epic Provided Materials for the conduct of Your business or patient care. You and Your medical professionals must exercise independent, clinical judgment in connection with the use of the Epic Provided Materials and assume full responsibility for Your and their selection, review and use of the Epic Provided Materials, and for its appropriateness, reliability, regulatory compliance, effectiveness and accuracy in connection with the practice of medicine or any other use of the Epic Provided Materials.

VI. Subscription Fee.

The Epic Provided Materials are licensed to you on a subscription basis. The current subscription rate is \$1,000 per year (the "Subscription Rate"). No other license or maintenance fees will be due with respect to the Epic Provided Materials. The subscription fee is payable according to the terms on the invoice You will receive from Epic upon completion of this Agreement. The Subscription Rate may be revised at any time following written notice to You of the change. Such new Subscription Rate will be effective thirty (30) days after you receive notice of the Subscription Rate change.

VII. Taxes.

The Subscription Rate and any other amounts payable by You under this Agreement are exclusive of taxes and similar assessments. You are responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory on any amounts payable by You hereunder, other than any taxes imposed on Epic's income.

VIII. Payments.

You will pay all subscription fees by the due date indicated on the invoice. Payment will be made to the following address:

Epic Systems Corporation
PO Box 88314, Milwaukee
WI 53288-0314

If You fail to make any payment when due, then in addition to all other remedies that may be available, Epic may charge interest on the past due amount at the rate of 1.5% per month, calculated daily and compounded monthly, or, if lower, the highest rate permitted under applicable law. You agree to reimburse Epic for all costs incurred by Epic in providing any late payments or interest, including

attorneys' fees, court costs and collection agency fees. You further agree that if You continue to fail to make payment for more than thirty (30) days following written notice thereof, Epic may revoke Your license keys to use the Epic Provided Materials in the Epic Software.

IX. No Deductions or Setoffs.

All amounts payable to Epic under this Agreement will be paid by You to Epic in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason.

X. Term.

The initial term of this Agreement commences as of the date You click "I Accept" below, and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until one (1) year from such date (the "Initial Term"). This Agreement will automatically renew for additional successive one (1) year terms (each a "Renewal Term" and collectively together with the Initial Term, The "Term") unless terminated earlier in accordance with this Agreement, or a party gives the other party written notice of intent to not renew at least ninety (90) days prior to the expiration of the then-current term.

XI. Termination.

In addition to any other express termination right set forth in the Agreement, Epic may terminate this Agreement, effective on written notice to You, if You (i) fail to pay any amount when due, and such failure continues more than thirty (30) days after Epic provides You with written notice of Your failure to pay; or (ii) any breach of the terms of this Agreement. Either party may also terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

XII. Effect of Expiration or Termination.

Upon any expiration or termination of this Agreement, except as otherwise expressly provided in this Agreement: (a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate; (b) You will immediately cease all use of any of the Epic Provided Materials, and upon Epic's written request, provide certification that You have ceased any use of the Epic Provided Materials; and (c) Epic may disable all of Your access to the Epic Provided Materials.

XII. Survival.

Sections 2, 3, 4, 5, 7 and 14 and 16 will survive the termination of this Agreement.

XIII. Representations and Warranties.

By clicking "I Accept" below, You represent and warrant that You have the full right, power and authority to enter into and perform Your obligations under this Agreement, You have the necessary

authorizations to enter into this Agreement on behalf of Your organization, and You intend to be bound in accordance with the terms of this Agreement.

XIV. Indemnification.

By clicking "I Accept" below, You agree, to the maximum extent allowed 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 the Epic Provided Materials, including without limitation any Claims that Your use of the Epic Provided Materials infringes any third party intellectual property or proprietary rights, as well as any Claims that Epic was negligent in the creation of or provision of the Epic Provided Materials to You. 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.

XV. Entire Agreement

This Agreement, together with any attachments to this Agreement, the App Orchard Program Details, and the App Orchard Recipient Agreement constitute the sole and entire understanding of the parties with respect to the Epic Provided Materials, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the Epic Provided Materials.

XVI. Assignment

You may not assign or otherwise transfer any of Your rights, or delegate or otherwise transfer any of Your obligations under this Agreement without Epic's prior written consent. No delegation or transfer will relieve You of any of Your obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section is void. This Agreement is binding upon the parties, and to any respective permitted successors or assigns.

BY CLICKING 'I ACCEPT' BELOW, YOU INDICATE YOUR ACCEPTANCE OF ALL TERMS SET FORTH IN THIS AGREEMENT. THE LICENSE TO THE EPIC PROVIDED MATERIALS 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.