



Contract Number
23-320

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	<u>William L. Gilbert</u>
Telephone Number	<u>(909) 580-6150</u>
Contractor	<u>American Burn Association</u>
Contractor Representative	<u>Dena Leishman</u>
Telephone Number	<u>(312) 642-9260</u>
Contract Term	<u>January 1, 2023 and automatically renewing annually until terminated by either party</u>
Original Contract Amount	<u>\$4,500 Annually</u>
Amendment Amount	<u></u>
Total Contract Amount	<u>\$4,500 Annually</u>
Cost Center	<u>6110</u>

Briefly describe the general nature of the contract: License Agreement, including non-standard terms with American Burn Association for access to the registry and burn care quality analytics cloud-based software platform in the annual amount of \$4,500 for the retroactive term or January 1, 2023 and automatically renewing annually until terminated by either party.

FOR COUNTY USE ONLY

Approved as to Legal Form

► Bonnie Uphold
Bonnie Uphold, Supervising Deputy County
Counsel

Date 5-8-2023

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► William L. Gilbert
William L. Gilbert, Director

Date 5/8/23

License Agreement

This agreement ("Agreement"), dated this 1st day of January, 2023, ("Effective Date") is made between the **AMERICAN BURN ASSOCIATION**, an Illinois not-for-profit corporation ("the ABA") and San Bernardino County, a political subdivision organized and existing under the constitution and the laws of the State of California and operating a hospital or surgery center, on behalf of the Edward G. Hirschman Burn Center at Arrowhead Regional Medical Center ("Burn Data Contributor").

RECITALS

A. The ABA and BData Inc., a Delaware corporation ("BData"), have collaborated to develop a software platform called the Burn Care Quality Platform (the "Burn Care Quality Platform") pursuant to a Master Services Agreement between the ABA and BData dated January 1, 2019 ("Master Agreement"). The Verification Platform, and Pre-Review Questionnaire (PRQ), are included in the Platform if the appropriate fee has been paid.

B. Pursuant to the Master Agreement, the ABA was granted a non-exclusive right for Burn Data Contributors to use the Burn Care Quality Platform.

1. License and Fees

1.1 The ABA grants to Burn Data Contributors, subject to the provisions of this Agreement, a non-exclusive license to use a cloud hosted platform commonly referred to as the Burn Care Quality Platform, which has been developed by BData and supplied to the ABA pursuant to the Master Agreement. Burn Data Contributors agree to pay any applicable Participation Fees as shown on Appendix A. This License Agreement may be renewed for additional years by payment of applicable fees. ABA shall notify the Burn Data Contributor of the fees applicable to future years.

1.2 The ABA will provide each Burn Data Contributor with information that will allow it to access the Burn Data Platform. Burn Data Contributors shall have and maintain technology necessary for them to access the Burn Care Quality Platform via the Internet.

1.3 For the term of this Agreement, telephone support will be provided by BData for assistance specifically related to the Burn Data Contributors' use of the Burn Care Quality Platform and to the sending of Burn Care Quality Registry data. Neither the ABA nor BData is responsible for providing hardware, operating system and/or network support.

1.4 User training will be provided by the ABA at times and rates set by the ABA.

2. Data Contribution.

Burn Data Contributor shall provide pertinent ABA Burn Registry Data to the ABA and represents that it has the right to do so or has obtained any necessary third party consents as required by applicable law.

2.1 Burn Data Contributors acknowledge and agree that the Burn Care Quality Platform requires certain Data Format Requirements and that if any report the Burn Data Contributors submit into the ABA Burn Care Quality Platform or Registry is noncompliant with the Data Format Requirements, the ABA and BData shall be relieved of any and all obligation hereunder that are dependent on such data, without penalty to the ABA or BData.

2.2 The representative copy of data contributed to the Burn Care Quality Platform by the Burn Data Contributors (i.e., participating burn centers) through the Burn Care Quality Platform will be owned by the ABA, and may be used subject to the terms of this Agreement and the Business Associate Agreement (“BAA”) between Burn Data Contributors and the ABA. Burn Data Contributor grants to BData and the ABA the non-exclusive right to utilize the data transferred into the ABA Burn Care Quality Registry for the following purposes:

- Verification site review as requested by the Burn Data Contributor,
- Quality improvement, national policy, education, research and advocacy initiatives,
- Data aggregation for
 - National registry summary reports,
 - De-identified research data set, subject to data requestor agreement to abide by Burn Quality Data Terms and Conditions Agreement, and
 - Benchmarking reports to be provided to the Burn Data Contributors at least as frequently as annually after compilation of the data calls to the ABA.

Provision of above services is subject to the condition that the Burn Data Contributors will not be identified as the contributor of specific data when such data is published, although ABA retains the right to publish a list of Burn Data Contributors independent of such data.

3. Restrictions on Use of the Burn Care Quality Platform

3.1 The Burn Care Quality Platform and all copies thereof, all other intellectual property produced by BData, and any copyrights and other proprietary rights therein are the exclusive property of BData. Subject to the terms of this Agreement and any terms agreed to on the Burn Care Quality Platform, the ABA hereby grants the Burn Data Contributor a nonexclusive license for the term of this Agreement to use the Burn Care Quality Platform in accordance with the terms of this Agreement and any terms agreed to on the Burn Care Quality Platform. Burn Data Contributor shall not, directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code, underlying structure, ideas, algorithms, documentation, data, associated media, any printed materials, web-based or other online training materials, files and information of the Burn Care Quality Platform; or modify, translate, or create derivative works based on the Burn Care Quality Platform. Burn Data Contributors shall include the proprietary notice of the ABA and/or BData externally on the distribution medium.

3.2 Without the ABA’s prior written consent, Burn Data Contributors shall not provide, distribute internally, or otherwise make available the Burn Care Quality Platform in any form to any person, except to (i) Burn Data Contributor’s employees and contractors who require access to the Burn Care Quality Platform to perform their employment duties and (ii) employees of BData or of the ABA during the period they are on Burn Data Contributor’s premises for purposes specifically related to Burn Data Contributor’s use of the Burn Care Quality Platform as authorized under this Agreement. Burn Data Contributors shall take appropriate action, by instruction, agreement, or otherwise, with any persons permitted access to the Burn Care Quality Platform to ensure Burn Data Contributor’s performance of its obligations under this Agreement. Burn Data Contributor agrees to use the Burn Care Quality Platform only in connection with its own data processing services and is expressly prohibited from using the Burn Care Quality Platform to perform any service for any other person or entity.

3.3 Burn Care Quality Platform reports and underlying data are provided by the ABA for quality improvement uses internal to Burn Data Contributor. Burn Data Contributor agrees that findings are not an ABA endorsement of care quality. The Burn Data Contributor will not publicly distribute or otherwise use the platform, or reports or data extracted from the platform, for any purpose requiring external disclosure; use for research disclosed externally requires written approval from ABA.

3.4 Confidentiality. Protected Health Information provided by Burn Data Contributors will be governed by the BAA between the ABA and the Burn Data Contributor, and the Sub Business Associate Agreement between the ABA and BData. The benchmarking data are the confidential information of the ABA, and the operating details, models, reporting formats, and data storage practices of the Burn Care Quality Platform are the confidential information of BData. Except as required by law, Burn Data Contributor shall not use or disclose confidential information except as permitted by this Agreement or by advance written consent of the party that owns the confidential information.

3.5 Ownership of Marks. Burn Data Contributor acknowledges that all right, title and interest in and to all marks associated with the Burn Care Quality Platform are owned by the ABA, that Burn Data Contributor will do nothing inconsistent with such ownership in such marks and that all use of the marks by Burn Data Contributor shall inure to the benefit of and be on behalf of the ABA. Nothing in this Agreement or otherwise shall give Burn Data Contributor any right, title or interest in the marks. Burn Data Contributor agrees that it will not attack or challenge the title of the ABA to the marks or attack the validity of this Agreement or any marks owned by the ABA and associated with the software.

4. Limited Warranties; Disclaimers of Liability. BData has warranted to the ABA that the Burn Care Quality Platform will perform substantially as described in any published documentation for the Burn Care Quality Platform. The ABA's and BData's sole liability and obligation with respect to the breach of this warranty is for BData to use reasonable efforts to correct known bugs in the Burn Care Quality Platform. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSES. IN NO EVENT SHALL THE ABA OR BDATA BECOME LIABLE TO THE BURN DATA CONTRIBUTOR OR TO ANY OTHER PARTY FOR ANY LOSS OR DAMAGES, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE, INCLUDING BUT NOT LIMITED TO TIME, MONEY OR GOODWILL, COSTS OF SUBSTITUTION, PROPERTY DAMAGE, OR OTHER LOSSES ARISING FROM THE USE, OPERATION OR MODIFICATION OF THE BURN CARE QUALITY PLATFORM BY THE BURN DATA CONTRIBUTOR, EVEN IF THE ABA OR BDATA HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN THE EVENT THAT UNDER ANY APPLICABLE LAW ANY OF THE ABOVE EXCLUSIONS OF WARRANTY OR LIABILITY ARE DISALLOWED UNDER SUCH APPLICABLE LAW, OR IN THE EVENT THE ABA OR BDATA BREACHES ANY OF THEIR OBLIGATIONS UNDER THIS AGREEMENT, THE SOLE LIABILITY OF THE ABA AND BDATA SHALL BE AN AMOUNT PAYABLE BY THE ABA EQUAL TO THAT PORTION RELATING TO THIS AGREEMENT OF THE SUM OF ANY ANNUAL PARTICIPATION FEE, IF ANY, PAID TO THE ABA FOR THE PARTICULAR YEAR FOR WHICH A LIABILITY, OR BREACH, AS THE CASE MAY BE, IS ASSERTED BY THE BURN DATA CONTRIBUTOR. THE BURN DATA CONTRIBUTOR AGREES TO ASSUME FULL RESPONSIBILITY FOR THE SELECTION OF THE BURN CARE QUALITY PLATFORM TO ACHIEVE ITS INTENDED RESULTS AND FOR THE INSTALLATION, MAINTENANCE AND USE OF, AND RESULTS OBTAINED FROM, THE BURN CARE QUALITY PLATFORM.

5. Special Warning and Limitation. No Data or set of Data from the Burn Care Quality Platform or the ABA Burn Registry regarding individual patients or a group of patients is to be construed as either a standard of care of the ABA or BData or as a recommendation for patient care by the ABA or BData. The ABA and BData shall have no responsibility or liability of and kind whatsoever for any use made of Data or set of Data by the Burn Data Contributor or any other person. IN ADDITION TO THE FOREGOING PROVISIONS OF THIS SECTION 5, ALL PROVISIONS OF SECTION 4 ABOVE SHALL ALSO APPLY TO THIS SECTION 5.

6. Term and Termination. Subject to the following limitations, the term of this Agreement commences as of the Effective Date. The Agreement will automatically renew for one (1) year terms on December 31st of each year as set forth in this Agreement. In the event that the Burn Data Contributor chooses to terminate participation, the Burn Data Center must notify the ABA in writing at least 30 days prior to the contract renewing for another year. In the event that the Burn Data Contributor fails to pay any applicable Participation Fee or fails to comply with any other provisions of this Agreement, the ABA may terminate the Burn Data Contributor's rights under this Agreement by written notice to that effect to the Burn Data Contributor. In the event BData for whatever reason ceases to maintain the Burn Care Quality Platform or terminates its Master Services Agreement with the ABA, all use of the Burn Care Quality Platform by the Burn Data Contributor shall be discontinued. A termination of the ABA's rights under its Master Services Agreement with the BData shall not terminate any of the ABA's or BData's rights under this Agreement, including its right to enforce any of its rights hereunder.

7. Applicable Law and Venue. This license and the rights of the parties hereunder shall be governed by, and the rights of the parties shall be interpreted in accordance with, the laws of the State of Illinois.

8. Rights Not Assignable. The rights of Burn Data Contributor under this Agreement are not assignable by Burn Data Contributor without the prior written consent of the ABA and BData, and neither the license granted hereunder nor any of the Burn Care Quality Platform or copies thereof may be sublicensed, assigned, encumbered or transferred by Burn Data Contributor, by operation of law or otherwise, without the prior written consent of the ABA and BData. Any attempt by Burn Data Contributor to sublicense, assign, encumber or transfer any of the rights, duties or obligations under this Agreement is void. Subject to the foregoing, this License shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors. Without the prior consent of the Burn Data Contributor, this License is not assignable by the ABA in whole or in part.

9. No Waivers. No waiver in the exercise of any power, right or remedy by the ABA or BData shall be deemed to be a continuing waiver or waiver of any other power, right or remedy. No failure or delay on the part of the ABA or BData in the exercise of any power, right or remedy shall be deemed to be a waiver of the power, right or remedy. The remedies of the ABA and BData hereunder are cumulative and the exercise of any one or more shall not be construed as a waiver of any other.

10. Burn Data Contributor Acknowledgement. BURN DATA CONTRIBUTOR ACKNOWLEDGES THAT IT HAS READ THIS LICENSE, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS, AND THAT BDATA IS A THIRD-PARTY BENEFICIARY OF THIS AGREEMENT. BURN DATA CONTRIBUTOR FURTHER AGREES THAT THIS AGREEMENT, ANY TERMS AGREED TO ON THE BURN CARE QUALITY PLATFORM, AND THE BAA BETWEEN BURN DATA CONTRIBUTOR AND THE ABA ARE THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE BURN CARE QUALITY PLATFORM AND WHICH SUPERSEDE ANY PROPOSED OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

This agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. the parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the party an original Agreement upon request.

IN WITNESS WHEREOF, Burn Data Contributor has executed this Agreement as of this _____ day of _____, subject to acceptance by the ABA.

Burn Center Name:
San Bernardino County on behalf of the Edward G.
Hirschman Burn Center at Arrowhead Regional Medical
Center

THE AMERICAN BURN ASSOCIATION

By: Dawn Rowe

By: Kimberly Hoarle

Title: Chair, Board of Supervisors

Title: Executive Director

Signature: *Dawn Rowe*

Signature: *Kimberly A Hoarle*

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: *[Signature]*
Deputy



Exhibit A – Pricing

2023 annual participation fees:

BCQP Full Registry (includes data entry)	\$4,500
BCQ Analytics only	\$3,500

