



San Bernardino County

Legislation Text

File #: 4612, Agenda Item #: 19

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

July 27, 2021

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 Epic Systems Corporation, for the loading of third-party software or content to the Epic Hosting Service and direct the Clerk of the Board 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, subject to review by County Counsel.
3. Direct the Director to transmit copies of all documents in relation to these agreements to the Clerk of the Board of Supervisors within 30 days of execution.

(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

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

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.

Epic has 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. In accordance with the Hosting Services Agreement, Epic has requested that the URF be held confidential based on Section 6 of the agreement.

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.

1. The County agrees to 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 maintain a license for any of the 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 cause by uploading the third-party software, 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 confirm with the third-party software licensor that Epic can deploy the software on the County's behalf.
 - There is no equivalent County standard.
 - Potential Impact: If ARMC fails to confirm approval from the licensor, the County could be liable for breach of contract and/or a claim of intellectual property infringement from the third-party software provider.

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 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 July 1, 2021; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on July 2, 2021; Finance (Yael

Verduzco, Administrative Analyst, 387-5285) on July 8, 2021; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on July 11, 2021.