



### Use License

**This Use License (herein, the “Agreement”) is between The County of San Bernardino on behalf of Arrowhead Regional Medical Center, (“ARMC”), 400 North Pepper Avenue; Colton, CA 92324 and ELM Exchange, Inc., (“ELM”), a Maryland corporation having its principal office at 2 Loganwood Court; Rockville, MD 20852.**

License: ELM hereby grants ARMC a limited, non-exclusive, non-transferable, non-sublicensable right to use the services and intellectual property described in the attached appendix during the Term. Such license shall apply to ARMC’s Registrants as defined in the attached appendix.

Term: The Term of this Agreement shall be three (3) years, beginning September 13, 2016 and ending September 12, 2019.

### Termination:

ELM may terminate this Agreement without advance notice if ARMC materially breaches this Agreement or the terms and conditions in the attached appendix (except in the event of nonpayment), and any fees paid to ELM by ARMC shall not be refunded.

### Warranties:

1. Mutual. Each party warrants that it has all authorization necessary to enter into this Agreement and neither party has entered into an agreement that would conflict with this Agreement or prevent a party from performing its obligations hereunder.
2. By ELM. ELM expressly warrants that it is the sole owner of all right, title and interest in its intellectual property. ELM has not intentionally designed its services, including its website and any downloadable content available therefrom, to place on any mobile device, desktop computer or computer network of a user of the ELM services any virus, logic bomb, Trojan horse, worm, remote access or lockout capability, spyware, malware or other harmful or malicious code (collectively, “Malicious Code”); it uses reasonable efforts to identify and remove any such Malicious Code that may be contained within the ELM services; and it will promptly notify ARMC if it becomes aware of or suspects that any Malicious Code is contained in the ELM services.
3. Disclaimer. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES MADE BY EITHER PARTY WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED BY SUCH PARTY HEREUNDER AND THE PARTY’S PERFORMANCE HEREUNDER. EACH PARTY HEREBY DISCLAIMS ANY ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Indemnity: ARMC agrees to indemnify ELM for, and hold it harmless from, any and all claims, suits, damages, costs, losses, expenses, fines, penalties, and reasonable attorney fees suffered or incurred by ELM in any manner resulting from, or arising out of, ARMC’s negligent act, error or omission or breach of this Agreement. ELM agrees to indemnify ARMC for, and hold it harmless from any and all claims, suits, damages, costs, losses, expenses, fines, penalties, and reasonable attorney fees suffered or incurred by ARMC in any manner resulting from, or arising out of, ELM’s negligent act, error, or omission or breach of this Agreement.

Limitation of Liability: EXCEPT WITH RESPECT TO EACH PARTY’S LIABILITY FOR BREACHES OF CONFIDENTIALITY AND FOR INDEMNIFICATION OBLIGATIONS HEREUNDER, WHICH SHALL NOT BE LIMITED IN ANY WAY, NEITHER PARTY SHALL BE



LIABLE HEREUNDER FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES OF ANY KIND, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT APPLICABLE LAW MAY PROHIBIT OR LIMIT EXCLUSIONS AND LIMITATIONS OF LIABILITY, AND THE PARTIES AGREE THAT ANY SUCH PROHIBITIONS OR LIMITATIONS THAT MAY BE IMPOSED BY APPLICABLE LAW SHALL NOT VOID OR NULLIFY THE ESSENTIAL PURPOSE OF THIS SECTION OR THE TERMS SET FORTH IN THIS SECTION THAT ARE PERMISSIBLE UNDER APPLICABLE LAW.

License Fee: Pricing and fees are described in the attached appendix and are incorporated by reference herein.

Payment Terms: ARMC shall pay, in full, invoices submitted by ELM within sixty (60) days of receipt. Invoices shall be addressed to: ARMC, 400 North Pepper Avenue; Colton, CA 92324. If the invoice is not paid within ninety (90) days from the date of the initial invoice, ELM will discontinue provision of services until payment is received, and at its option, ELM reserves the right to terminate this agreement without further notice or obligation to provide further services, and retains all rights to obtain and collect all amounts owed.

Notification: Notice or communications from ELM or ARMC pertaining to this Agreement shall be sent by first-class mail, postage prepaid, by overnight courier, or by electronic mail to the other entity at the address shown in this document until notified in writing to send notice or communication to another address. Notice or communication shall be deemed to have been given, if by first-class mail, three business days after deposit and if by personal delivery, upon receipt or refusal of receipt.

**COMPANY:**

Arrowhead Regional Medical Center  
400 North Pepper Ave.  
Colton, CA 92324  
Attn: GME Department

**ELM Exchange:**

ATTN: Contracts Manager  
2 Loganwood Court  
Rockville, MD 20852  
Phone: (646) 536-7544  
Fax: (646) 607-7829  
contracts@elmexchange.com

**Privacy/Confidentiality:**

1. Confidentiality and Non-Use. ELM and ARMC agree to adhere to applicable requirements of consumer privacy laws, rules and regulations. ELM and ARMC understand that each entity has disclosed or may disclose information which has commercial, technical or other value in the disclosing entity's business and is confidential, private, or proprietary in nature (collectively, "Confidential Information"). To the extent that Confidential Information is shared between them, it is done so to administer a transaction requested or authorized by the ARMC or the Registrant(s), and offer products and services to the Registrant(s). During the Term of this Agreement, a receiving entity agrees to hold the disclosing entity's Confidential Information in confidence and to take all precautions to protect Confidential Information as the receiving entity employs with respect to its most



confidential materials, but in no case shall the receiving entity employ less than reasonable precautions, not disclose directly or indirectly any such Confidential Information or any information derived therefrom to any third person unless disclosure is required by law, not make any use at any time, whether directly or indirectly, of such Confidential Information except for the sole limited business purposes of evaluating the Confidential Information internally, and not directly or indirectly copy or reverse engineer, or attempt to derive the composition or underlying information, structure or ideas of any such private or Confidential Information.

2. Disclosure Required by Law. Notwithstanding anything in this Section to the contrary, the receiving entity may disclose Confidential Information of the disclosing entity to the extent required by applicable law, including pursuant to a subpoena or other court order, provided that receiving entity gives disclosing entity prompt written notice of each requirement prior to such disclosure and cooperates with disclosing entity's efforts to limit the scope of the information to be provided or to obtain an order protecting the information from public disclosure.

Independent Contractor: ELM shall at all times act in its own capacity and right as an independent contractor. Nothing shall be construed to make ELM, or its representatives, an employee, partner, or joint venture, of ARMC or any Registrants.

Entire Agreement: This Agreement (including the appendix hereto) supersedes all prior and contemporaneous agreements, representations and understandings regarding the subject matter hereof and contains the entire agreement between the parties. No amendment or modification of this Agreement shall be effective unless such amendment or modification is in writing and is signed by a duly authorized representative of each party.

Waiver: No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

Assignment: Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, either party may assign the Agreement together with all rights and obligations hereunder, without the consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets or securities not involving a direct competitor of the other party. Any attempt by a party to assign its rights and obligations under this Agreement in breach of this Section shall be void and of no effect.

Equitable Relief: Each party acknowledges that money damages alone may not be adequate relief for breach of a party's confidentiality obligations or breach of the licenses set forth in this Agreement, and consequently, in the event of an actual or threatened breach of such sections, the party that would be harmed by such breach, in addition to any other remedies available to it, may seek equitable relief, including without limitation injunctive relief.

Governing Law and Forum: This Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws provisions. The state courts located in San Bernardino County, California and the federal courts located in the state of California shall have exclusive jurisdiction over any disputes arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts.



Force Majeure: Neither party shall be liable for any delays in the performance of its obligations hereunder, except for payment obligations, due to events beyond its reasonable control, including without limitation, fire, earthquakes, war, riots or civil unrest, acts of terrorism, or other acts of God.

The attached appendix is incorporated by reference to the same extent as if set forth in full in this Agreement.

**ACCEPTED AND AGREED:**

\_\_\_\_\_  
County of San Bernardino on behalf of Arrowhead  
Regional Medical Center

Date: \_\_\_\_\_

\_\_\_\_\_  
Steve Pelletier  
Vice President, ELM Exchange

Date: \_\_\_\_\_

## **APPENDIX: PROGRAMS, ASSUMPTIONS, & FEES**

### **Physician and Advanced Practitioner Program**

ARMC'S physician and advance practitioner program Registrants will have access to the courses within their program 24/7/365 from any computer or mobile device with internet access. A "Registrant" is defined as a registered user, regardless of courses taken.

- ARMC agrees to pay ELM an annual license fee of \$15,000 per year. This fee will cover up to 200 registrants. ELM will continually monitor ARMC's registrant levels. Should registrants continue to grow, ELM will bill ARMC an additional fee of \$5,500 as soon as registrants enter into each new registrant tier of 100 registrants: 101 to 200 registrants, 201 to 300 registrants, 301 to 400 registrants, etc.

The above consideration will represent payment in full for the Services. ARMC shall have no liability for any expenses or taxes in connection with the Agreement.

*ELM Exchange, Inc. is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for physicians.*

*ELM Exchange, Inc. is accredited as a provider of continuing nursing education by the American Nurses Credentialing Center's Commission on Accreditation.*