
Epicor Controlled Release Agreement

(Updated January 8, 2020)

The following terms and conditions (“**Agreement**”) govern Customer’s acquisition and use of the Evaluation Products ordered from Epicor Software Corporation or its Affiliate specified in the Order on a controlled release (i.e., early release) basis. By executing and submitting the Order that references this Agreement, Customer acknowledges that it has had the opportunity to view this Agreement and agrees to the terms and conditions contained herein. The individual(s) executing the Order represent that they have the authority to bind Customer to the Agreement.

1. Certain Definitions

- 1.1. “**Affiliate**” means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with the applicable entity.
- 1.2. “**Control**” or “**Controlled**”, for purposes of the Affiliate definition, means direct or indirect ownership or control of more than 50% of the voting interest in the applicable entity.
- 1.3. “**Customer**” means the entity named on the Order.
- 1.4. “**Customer Data**” means all electronic information submitted by Customer to and stored as part of the Evaluation Services performed by Epicor or its suppliers to process such information.
- 1.5. “**Deliverables**” means the Evaluation Products and supporting Documentation and deliverables developed, created or produced by Epicor hereunder.
- 1.6. “**Documentation**” means Epicor’s standard read-me and online help materials, user documentation and training materials normally made available in connection with a specific Evaluation Product.
- 1.7. “**Epicor**” means **Epicor Software Corporation**, or the Affiliate of Epicor Software Corporation specified in an Order.
- 1.8. “**Evaluation Software**” means Software licensed on a controlled release basis.
- 1.9. “**Evaluation Products**” means Evaluation Software and/or Evaluation Services obtained by Customer hereunder.
- 1.10. “**Evaluation Services**” means SaaS Services offered on a controlled release basis.
- 1.11. “**Order**” means a quotation or order form documentation for ordering an Evaluation Product.
- 1.12. “**Product Notes**” means additional or alternative terms and conditions applicable to an Evaluation Product supplied by Epicor hereunder as specified or referenced in an Order.
- 1.13. “**SaaS Services**” means Epicor’s online business application suite or portions thereof offered on a Software as a Service (SaaS) basis as specified in an Order.
- 1.14. “**Software**” means Epicor’s online business application suite or portions thereof offered on an on premises basis as specified in an Order.
- 1.15. “**Updates**” means a patch, workaround, improvement, correction, modification or derivative to the Evaluation Products.
- 1.16. “**Users**” means individuals authorized by Customer to use the Evaluation Products pursuant to the Agreement and to whom Customer has supplied a unique user identification and password for the Evaluation Products.

2. Authorization and General Restrictions; Support

- 2.1. **Evaluation Software License Grant.** Subject to the terms and conditions contained herein and any limitations specified in an Order, Epicor grants Customer on behalf of Customer and its Affiliates a personal, non-exclusive, non-transferable, and worldwide license for the use of the Evaluation Software solely to test and evaluate the Evaluation Software for Customer’s own internal use and not for production use. The Evaluation Software is considered temporary in nature, subject to either party’s right to terminate in accordance with this Agreement. The Evaluation Software is for the object code (run-time) version of the Evaluation Software and such Updates as may hereafter be provided by Epicor to Customer. The Evaluation Software is subject to the associated license type(s) designated on an Order or the related Documentation.
- 2.2. **Evaluation Services Authorization.** Subject to the terms and conditions contained herein and any limitations specified in an Order, Epicor makes Evaluation Services available to Customer and its Affiliates on a personal, non-exclusive, non-transferable, and worldwide basis solely to test and evaluate the Evaluation Services for Customer’s own internal use and not for production use. Customer makes the Evaluation Services available on a temporary basis, subject to either party’s right to terminate in accordance with this Agreement.
- 2.3. **Not Generally Available.** Customer acknowledges the Evaluation Products are not considered “generally available”, may never be declared “generally available” by Epicor and the usage thereof is and remains governed by the Agreement and not by any other agreement between Epicor and Customer or their respective Affiliates, including without limitation, master customer agreement, master services agreement, end user license agreement or any other agreement.
- 2.4. **Usage Restrictions; Acceptable Use Policy.** Customer and its Users will use the Evaluation Products only in accordance with the associated Documentation, the Agreement and any applicable Product Notes, and may not and will not permit any third party to use the Evaluation Products: (a) in a way prohibited by the Agreement or by law, regulation, governmental order or decree; (b) to violate the rights of others; (c) to try to gain unauthorized access to or disrupt any service, data, account or network; (d) to falsify any protocol or email header information (e.g., “spoofing”); (e) to spam or distribute Malicious Code; (f) in a way that could reasonably be expected to harm the Evaluation Services or impair anyone else’s use of them; (g) to reverse engineer, modify, decrypt, extract, disassemble, or decompile the Evaluation Products; (h) to build or support products or services

competitive to Epicor; (i) to license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, or commercially exploit, or make available the Evaluation Products to any third party except as permitted by this Agreement; (j) in any application or situation where failure of the Evaluation Products could lead to death or serious bodily injury or any person, or to the severe physical or environmental damage; or (k) to otherwise violate any other similar "acceptable use" policies communicated by Epicor in writing, including via email or inclusion on website specified by Epicor.

2.5. Export. The Evaluation Products offered by Epicor hereunder are governed by U.S. export regulations and may not be exported to or by embargoed countries or individuals. Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports.

3. Customer Obligations

3.1. Evaluations. Customer will, where applicable, install and/or configure the Evaluation Products (including any Updates thereto) to meet its requirements and to process transactions consistent with its regular procedures and in accordance with such other instructions communicated by Epicor to Customer in writing (including via website). Customer will also promptly report to Epicor any bugs or problems it encounters with the Evaluation Products and the context in which they occurred. From time to time Epicor may require Customer to deliver or otherwise grant access to Epicor a copy of relevant data, to be used confidentially, for the sole purpose of providing support "debugging" and revising or updating the Evaluation Products. Customer will participate in calls or other correspondence with Epicor to provide written or oral evaluations, suggestions or comments (the "Evaluations") concerning the Evaluation Products.

3.2. References. Upon Epicor's request, Customer will act as a reference for prospective customers of the Evaluation Products. Upon such request, Customer will furnish contact information for the reference and timely and courteously communicate its use and experiences with the Evaluation Products to the designated prospects.

3.3. Marketing. Upon Epicor's request, Customer will assist Epicor with the creation of marketing materials describing Customer's use and experiences with the Evaluation Products.

4. Confidentiality

4.1. Confidential Information. As used herein "Confidential Information" means all information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party") in connection with the Agreement, whether orally or in writing, designated as confidential or that reasonably should be understood to be confidential given the nature of the information and circumstances of disclosure. Confidential Information includes, without limitation, the Agreement and any associated Orders (including any pricing contained therein), the results of any testing related to the Deliverables, and any commercial, financial, marketing, business, technical or other data, know-how or other information disclosed by or on behalf of the Disclosing Party. Confidential Information does not include any information that (i) is already known to the Receiving Party or received by the Receiving Party from a third party, free of any obligation to keep it confidential, (ii) becomes publicly known through no wrongful act of the Receiving Party, (iii) is independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information, or (iv) is approved for release by written authorization of the Disclosing Party. Customer's Confidential Information includes the Customer Data.

4.2. Confidentiality. The Receiving Party will not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement without the Disclosing Party's prior written permission.

4.3. Protection. The Receiving Party agrees to keep confidential all Confidential Information disclosed to it by the Disclosing Party, and to protect the confidentiality thereof in the same manner as it protects the confidentiality of its own, but in any event with no less than reasonable care.

4.4. Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it will provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to seek a protective order or otherwise contest the disclosure.

4.5. Return. The Receiving Party will return all originals, copies and summaries of the Confidential Information upon termination or expiration of the Agreement or upon the Disclosing Party's request, or in the alternative, destroy the same and certify in writing to the Disclosing Party that all such Confidential Information has been destroyed. Nothing herein requires a party to erase any Confidential Information that is in an archived computer backup system in accordance with its respective security and/or disaster recovery procedures and each party may each retain copies of the Confidential Information to the extent required to comply with legal or regulatory requirements (all of which remains strictly subject to the restrictions in this Agreement).

4.6. Duration. The obligations regarding Confidential Information will continue until such time it ceases to meet the definition for Confidential Information.

4.7. Ownership. Each party retains sole and exclusive ownership in its Confidential Information.

5. Proprietary Rights; Customer Data

5.1. Deliverables. Epicor retains sole and exclusive ownership in the Deliverables (excluding any Customer Data or Customer Confidential Information included therein) and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by Epicor under the Agreement. All rights owned by Epicor and its suppliers not expressly granted in the Agreement are reserved by Epicor and its suppliers.

5.2. Trademark and Copyright Notices. Customer will not remove, alter or destroy any proprietary, trademark or copyright notices placed upon or contained within any Evaluation Products or other Deliverables. Customer does not and will not acquire

any rights of any kind in or to any trademark, trade name, logo or product designation under which a Evaluation Product or other Deliverable was or is marketed and, except as contemplated herein incidental to Customer's use of the Evaluation Products or other Deliverables, may not make any use of the same for any purposes without Epicor's prior written consent.

5.3. Feedback. Any Evaluations and other ideas, feedback, suggestions, requests, questions, comments, results of Customer's testing and evaluation of the Evaluation Products ("Feedback") are the property of Epicor. Customer agrees to take all reasonable action directed by Epicor, and at Epicor's expense, to assign the Feedback and any intellectual property rights therein to Epicor.

5.4. Customer Data Ownership and License. Customer retains sole and exclusive ownership to the Customer Data and is responsible therefor, and for the means by which Customer acquires the Customer Data. Where Epicor processes Customer Data under the Agreement on Customer's behalf, Customer grants to Epicor and its Affiliates and subcontractors a nonexclusive right to process Customer Data solely to fulfill their obligations under the Agreement. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of the Customer Data, and for obtaining all rights necessary to allow Epicor to perform its obligations under the Agreement.

5.5. Government Access Requests. If Epicor or its subcontractor receives a request for Customer Data directly from a law enforcement agency, then Epicor will redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, Epicor will promptly notify the Customer and provide a copy of the demand, unless legally prohibited from doing so. If required by law, Customer will notify individuals that are data subjects within the Customer Data that their data may be disclosed to law enforcement or other governmental authorities and obtain the individuals' consent to the same.

5.6. European General Data Protection (GDPR). If and to the extent Epicor processes "Personal Data" as defined under the EU General Data Protection Regulation, Epicor agrees to comply with the EU Data Processing Addendum available at <https://www.epicor.com/company/customer-agreements.aspx>, or such other website designated by Epicor, which is hereby incorporated by reference with respect to such Personal Data. If there is a conflict between the Master Terms and the EU Data Processing Addendum, the EU Data Processing Addendum controls.

5.7. California Consumer Protection Act (CCPA). If and to the extent Epicor processes "Personal Information of a Consumer" as defined under the CCPA for Customer, Epicor agrees to comply with the CCPA Data Processing Addendum available at www.epicor.com/company/customer-agreements.aspx, which is hereby incorporated by reference, with respect to such Personal Information. In the event of any conflict between this Agreement and the CCPA Data Processing Addendum, the CCPA Data Processing Addendum shall control.

6. No Warranty

6.1. The Evaluation Products are furnished to Customer on an "AS IS" basis without warranty.

6.2. CUSTOMER ACKNOWLEDGES THAT THE EVALUATION PRODUCTS ARE IN DEVELOPMENT AND THAT EPICOR DOES NOT WARRANT THAT CUSTOMER'S USE OF THE EVALUATION PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE OR THAT THE EVALUATION PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR NEEDS AND/OR THAT ERRORS IN THE EVALUATION PRODUCTS AND/OR SUPPORTING DOCUMENTATION WILL BE CORRECTED OR THAT THE EVALUATION PRODUCTS WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. NEITHER EPICOR, NOR ITS SUPPLIERS, SUBCONTRACTORS OR AGENTS MAKE ANY REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND EPICOR AND ITS SUPPLIERS, SUBCONTRACTORS AND AGENTS SPECIFICALLY DISCLAIM, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, REASONABLE SKILL AND CARE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7. Term and Termination; Suspension

7.1. Term; Termination. Except as otherwise specified in an Order, or as otherwise extended by Epicor in writing, the Agreement commences upon submission of the Order and continues until the earlier to occur of (i) the date the applicable Evaluation Product is generally released by Epicor for production use and (ii) termination of the Agreement by either party upon 15 days prior written notice. Epicor may also terminate the Agreement immediately upon written notice if the Evaluation Products (or portion thereof) become, or in Epicor opinion, are likely to become, the subject of a claim of intellectual property infringement.

7.2. Effects of Termination. Upon termination for any reason, Customer will immediately cease use of the Evaluation Products and in the case of Evaluation Software, uninstall the Evaluation Software (including any Updates thereto) and destroy or return any media that contained the same. Customer acknowledges that Epicor may disable access to and/or delete any Customer Data processed by the Evaluation Services. If Epicor releases the Evaluation Products on a "generally available" basis, Customer may obtain the generally available version of the Evaluation Products upon submitting an order therefore with Epicor.

7.3. Suspension. In addition to any other rights that Epicor may have, Epicor reserves the right to take remedial action if Customer breaches the Usage Restrictions, and such remedial action may include suspending Customer's use of the Evaluation Services. Epicor will promptly notify Customer of any such suspension and will limit the suspension in time and scope as reasonably possible under the circumstances.

8. Exclusion and Limitation of Liability

8.1. Exclusion of Certain Damages. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES OR SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE

FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

8.2. Limitation of Liability. Except for breaches of Sections 2, 4, and 5 of the Agreement, the total liability of a party to the other arising out of or related to the Agreement and the provision, use or enjoyment of the Evaluation Products shall not exceed USD\$100.00.

9. Governing Law; Jurisdiction; Jury Trial Waiver. The internal laws of the State of Texas USA govern this Agreement, and each party hereto submits to the non-exclusive jurisdiction and venue of the state or federal courts located in Travis County, Texas. The Agreement is not to be governed by the United Nations Convention on Contracts for the International Sales of Goods. The parties hereby waive any rights to a trial by jury.

10. Assignment. Customer may not assign, license, sublicense, pledge or otherwise transfer the Agreement or any rights under the Agreement, whether voluntarily or by operation of law, without Epicor's prior written consent. Without limiting the scope of the previous sentence any sale or transfer of assets, stock or any interest in Customer, or any merger, consolidation restructuring, or other business reorganization is to be considered a transfer covered by the previous sentence and prohibited hereby. The Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. Epicor may assign the Agreement upon written notice to Customer if the assignee agrees to be bound in writing by Epicor's obligations hereunder.

11. Additional Terms

11.1. Language. The English language version of this Agreement controls. If Customer is in Canada, it is the express wish of both parties that this Agreement, and any associated documentation, be written in English. Cest la volonté expresse des parties que la pré convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

11.2. U.S. Government Rights. The Evaluation Products are a "commercial item" as defined in FAR 2.101. If Customer (or a User) is United States federal government agency then Epicor provides the Evaluation Products, including any related software, technology and services, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If Customer (or a User) has a need for rights not granted under those terms, it must negotiate with Epicor to determine if there are agreeable terms for granting those rights, in which case a mutually agreeable written addendum specifically granting those rights must be included as part of this Agreement.

11.3. Third Party Rights. Customer acknowledges that Epicor's third-party suppliers are intended third-party beneficiaries to the Agreement and may benefit from and enforce the terms of the Agreement with respect to their Evaluation Products. Notwithstanding this right, the parties may, by agreement, rescind, amend, terminate or vary any term of the Agreement (and any documents entered into pursuant to or in connection with it) without the consent of a third-party beneficiary even if the third-party beneficiary has relied on, or indicated assent to, any term of the Agreement. Except as otherwise provided in this Section, a person who is not a party to the Agreement (including under the Contracts Rights of Third Parties Act 1999) has no right to enforce any of its terms.

12. General

12.1. Headings. Headings contained in the Agreement are for convenience only and are not part of the Agreement and do not in any way interpret, limit or amplify the scope, extent or intent of the Agreement or any of the provisions hereof.

12.2. Complete Agreement. The Agreement including any Order issued in connection herewith constitutes the entire agreement between the parties on the subject hereof and supersedes all other prior or contemporaneous agreements, negotiations, representations and proposals, written or oral. Epicor and Customer are each relying on their own judgment and have not relied upon and agree they will have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. The Agreement does not operate as an acceptance of any conflicting terms and conditions and will prevail over any conflicting provision of any purchase order or any other instrument of Customer, it being understood that any purchase order issued by Customer will be for Customer's convenience only and any terms and conditions therein are of no force or effect hereunder. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Epicor regarding future functionality or features.

12.3. Severability. If any provision of the Agreement is deemed to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will promptly amend the Agreement or the Agreement will be deemed to be amended to give effect to the stricken provision to the maximum extent possible.

12.4. Modifications and Waiver. No modification of, or amendment or addition to the Agreement is valid or binding unless set forth in writing signed by an authorized representative of each party; provided that an Order becomes valid and binding against Customer once signed and submitted by Customer. The waiver or failure of either party to exercise in any respect any right or remedy provided herein will not be deemed a waiver of any future right or remedy hereunder.

12.5. Notices. All notices and other communications between the parties must be in writing and given by (i) courier, (ii) first-class (or similar) registered or certified mail, postage prepaid, or (iii) email, the party's address or email address specified in the Order or such other address or email address that a party has notified to be that party's address or email address or for the purposes of this Section.

12.6. Force Majeure. Neither party will be responsible or liable for its failure to timely perform under the Agreement when its failure results from any cause beyond its reasonable control ("**Force Majeure Event**"). The time for performance will be extended for a period equal to the duration of the conditions that prevent performance.

12.7. Relationship. The parties are independent contractors. The Agreement does not create a joint venture or partnership between the parties; and no party is by virtue of the Agreement authorized as an agent, employee or representative of the other party.

12.8. Business Contact Information. Customer will provide accurate and complete information on Customer's legal business name, address, email address and phone number, and maintain and promptly update this information if it should change. Customer agrees to allow, and is authorized to allow, Epicor and its Affiliates and service providers to store and use Customer's business contact information, including names, business phone numbers, and business email addresses of Customer employees and contractors, anywhere they do business. Such information will be processed and used solely in connection with the parties' business relationship.