

## SUPPLEMENT

### EPICOR BUSINESS ASSOCIATE SUPPLEMENT

This Epicor Business Associate Supplement ("Supplement") is effective as of the date the last party signs below (the "Effective Date") and shall apply only in the event and to the extent that you and Epicor are, respectively, a Covered Entity and a Business Associate, as those terms are used in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health ("HITECH") provisions of the American Recovery and Reinvestment Act of 2009, and the regulations promulgated there under, as each may be amended from time to time (collectively, "HIPAA"). This Supplement is incorporated by reference into and governed by the Master Customer Agreement ("Agreement") between you and Epicor. In the event of an expressed and direct conflict between the Agreement and this Supplement, the terms of this Supplement will control.

1. Definitions. Capitalized terms used, but not otherwise defined, in this Supplement shall have the same meaning as set forth in the Agreement or in the Privacy Rule or Security Rule, as applicable.

- a. Business Associate. "Business Associate" shall mean Epicor Software Corporation to the extent HIPAA has imposed obligations on Epicor Software Corporation relative to the Protected Health Information of your customers.
- b. CFR. "CFR" shall mean the United States Code of Federal Regulations.
- c. Covered Entity. "Covered Entity" shall refer to you to the extent HIPAA has imposed obligations on you relative to the Protected Health Information of your customers.
- d. Electronic Protected Health Information. "Electronic Protected Health Information" (ePHI) shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- e. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- f. Security Rule. "Security Rule" shall mean those requirements of the 45 CFR §§ 164.308, 164.310, 164.312, 164.314, and 164.316.
- g. Hipaa Rules. "Hipaa Rules" shall mean those security and privacy regulations and rules codified in the Code of Federal Regulations (CFR) under title 45.
- h. Catch-all definitions. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

2. Obligations and Activities of Business Associate

- a. Business Associate agrees to use appropriate safeguards to prevent Use or Disclosure of PHI (other than as provided for by this Supplement) as Required By Law.
- b. Business Associate agrees not to Use or Disclose PHI other than as permitted or required by this Supplement or as Required By Law.
- c. Business Associate agrees to comply with the applicable HIPAA Security Regulations, 45 C.F.R. Parts 160, 162, and 164, with respect to any electronic PHI Business Associate creates, receives, maintains, or transmits for or on behalf of Healthcare Provider, including but not limited to:
  - i. Implementing appropriate Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI as required by the Security Regulations and;
  - ii. requiring any agent, including a subcontractor to whom it provides electronic PHI, to do the same.
- d. Business Associate agrees to work with Covered Entity to mitigate, to the extent reasonably practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Supplement.
- e. Business Associate agrees to report to Covered Entity any Use or Disclosure of PHI not provided for by this Supplement of which it becomes aware as Required By Law, including Security Incidents.
  - i. Business Associate will notify the Healthcare Provider of Breaches of Unsecured PHI without unreasonable delay and in no case later than sixty (60) calendar days after the Discovery of such a Breach of Unsecured PHI, as these terms are defined at 45 C.F.R. 164 subpart D.

ii. Business Associate's notice to the Healthcare Provider shall include the applicable elements as set forth at 45 C.F.R. 164.410(c).

- f. Business Associate agrees to require any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, to agree to materially the same restrictions and conditions that apply through this Supplement to Business Associate with respect to such information.
- g. Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity in order to reasonably permit Covered Entity to meet its requirements under 45 CFR §164.524, provided such access is done at a time, in a manner, and upon mutually agreeable terms so as not to interfere with Business Associate's business or operations.
- h. Business Associate agrees to make any reasonable amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at a time, in a manner, and upon mutually agreeable terms.
- i. Business Associate agrees to make internal policies, practices, books, and records related to the Use and Disclosure of PHI available for inspection to the Covered Entity at a time, in a manner, and upon mutually agreeable terms, or to the Secretary as directed by the Secretary, for purposes of permitting the Secretary to determine Covered Entity's compliance with the Privacy Rule or Security Rule.
- j. Business Associate agrees to document Disclosures, including an accounting of and information related to such Disclosures, as Required By Law.
- k. Business Associate is not required by this Supplement to disclose PHI to anyone other than the Covered Entity as required by this Supplement and the Secretary as Required By Law.

### 3. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Supplement, Business Associate may Use or Disclose PHI on behalf of, or to provide services to, Covered Entity or for the purpose of performing Business Associate's duties, or activities as specified in the Agreement or in this Supplement, provided that such Use or Disclosure of PHI would not violate the Privacy Rule or Security Rule if done by Covered Entity or the minimum necessary policies and procedures as Required By Law. Business Associate may use PHI to carry out its duties under this Supplement, as Required By Law, and to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

### 4. Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.
- d. Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule or Security Rule if done by Covered Entity.

### 5. Term and Termination

- a. Term. The Term of this Supplement shall be effective as of the Effective Date, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, the parties agree that the protections applicable to PHI are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Supplement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  - 2. Immediately terminate this Supplement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

c. Effect of Termination.

1. Except as provided in paragraph (2) of this subsection, upon termination of this Supplement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
2. In the event that Business Associate determines that returning or destroying PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further Uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

6. Miscellaneous

- a. Regulatory References. A reference in this Supplement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- b. Amendment. The parties agree to take such action as is necessary to amend this Supplement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPPA, and all subsequent laws and regulations bearing on the subject matter of this Supplement.
- c. Survival. The respective rights and obligations of Business Associate under Section 5(c) of this Agreement shall survive the termination of this Supplement.
- d. Interpretation. Any ambiguity in this Supplement shall be resolved to permit the parties to comply with the Privacy Rule and Security Rule.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to sign this Supplement as of the Effective Date.

BUSINESS ASSOCIATE:

COVERED ENTITY:

EPICOR SOFTWARE CORPORATION

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print name)

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