



Business Associate Agreement

This Agreement (the "Agreement") is made as of _____ (the "Effective Date") by and between Orchard Software Corporation ("Orchard"), an Indiana corporation, located at 701 Congressional Boulevard, Suite 360, Carmel, IN 46032; and _____ (the Covered Entity), located at _____; and defines the terms and conditions pursuant to a Business Associate Agreement as required by the Privacy Rule, 45 CFR Parts 160 and 164, of the Health Insurance Portability and Accountability Act of 1996.

Background

WHEREAS, Orchard is in the business of producing, selling, installing, and supporting clinical laboratory software, and in the normal course of installation and support of said software will, from time to time, have access to protected health information, and

WHEREAS, the Covered Entity is in the business of providing clinical laboratory services, has purchased software and a Support Agreement from Orchard, and acknowledges Orchard's need for occasional access to protected health information in the furtherance of its support activities.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

Agreement

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.

Business Associate. "Business Associate" shall mean Orchard Software Corporation.

Covered Entity. "Covered Entity" shall mean the party named in the preface to this Agreement.

Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

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.

Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate

- 2.1. Orchard agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- 2.2. Orchard agrees to use appropriate safeguards, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- 2.3. Orchard agrees to mitigate, to the extent practicable, any harmful effect that is known to Orchard of a use or disclosure of Protected Health Information by Orchard in violation of the requirements of this Agreement.
- 2.4. Orchard agrees to report to the Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- 2.5. Orchard agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from the Covered Entity, or created by Orchard on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Orchard with respect to such information.
- 2.6. Orchard agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Orchard on behalf of the Covered Entity, available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with the Privacy Rule.
- 2.7. Orchard agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- 2.8. Orchard agrees to provide to the Covered Entity or an Individual, in time and manner designated by the Covered Entity, information collected in accordance with Section 2.7 of this Agreement, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

3. Permitted Uses and Disclosures by Business Associate

- 3.1. Except as otherwise limited in this Agreement, Orchard may use or disclose Protected Health Information on behalf of, or to provide services to, the Covered Entity for the purpose of Installation and/or Support of Orchard's software, and associated licensed software, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the Covered Entity.
- 3.2. Except as otherwise limited in this Agreement, Orchard may disclose Protected Health Information, provided that disclosures are required by law, or Orchard obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Orchard of any instances of which it is aware in which the confidentiality of the information has been breached.

4. Obligations of Covered Entity

- 4.1. The Covered Entity shall provide Orchard with the Notice of Privacy Practices that it produces in accordance with 45 CFR § 164.520, as well as any changes to such Notice.
- 4.2. The Covered Entity shall provide Orchard with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Orchard's permitted or required uses and disclosures.
- 4.3. The Covered Entity shall notify Orchard of any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 CFR § 164.522.

5. Permissible Requests by Covered Entity

The Covered Entity shall not request Orchard to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

6. Term and Termination

- 6.1. Term. The Term of this Agreement shall be effective as of the Effective Date, and shall terminate when all of the Protected Health Information provided by the Covered Entity to Orchard, or created or received by Orchard on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2. Termination for Cause. Upon the discovery of a material breach by Orchard, the Covered Entity shall provide an opportunity for Orchard to cure the breach, or end the violation and terminate this Agreement and any related Agreement, if Orchard does not cure the breach or end the violation within the time specified by the Covered Entity; or immediately terminate this Agreement and any related Agreement if a cure is not possible.
- 6.3. Effect of Termination. Except as provided for elsewhere in this section, upon termination of this Agreement for any reason, Orchard shall return or destroy all Protected Health Information received from the Covered Entity, or created or received by Orchard on behalf of the Covered Entity. This provision also shall apply to Protected Health Information that is in the possession of subcontractors or agents of Orchard. Orchard shall retain no copies of the Protected Health Information.

In the event that Orchard determines that returning or destroying the Protected Health Information is infeasible, Orchard shall provide to the Covered Entity, notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Orchard shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Orchard maintains such Protected Health Information.

7. Other Terms

- 7.1. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- 7.2. Survival. The respective rights and obligations of Orchard under Section 6.3 of this Agreement shall survive the termination of this Agreement.
- 7.3. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Entity to comply with the Privacy Rule.

8. Correspondence

Pursuant to the requirements of this agreement, all requests for information and notifications shall be made in writing to each party's Security Officer, or designated representative, at the address noted below.

For Orchard:

Director of Regulatory Affairs
Orchard Software Corporation
701 Congressional Blvd., Suite 360
Carmel, IN 46032

For the Covered Entity:

Name and/or Title

Address

9. Entire agreement

This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter hereof. No agreement or other understanding in any way modifying the terms hereof will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS WHEREOF, the Covered Entity and Orchard Software Corporation agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date above written.

For Orchard:

Signature

Printed Name

Title

For the Covered Entity:

Signature

Printed Name

Title