



# API Subscription Agreement

This open.epic API Subscription Agreement (as may be updated, the "**API Agreement**") is entered into by and between Epic Systems Corporation ("**Epic**") and the Epic Customer that has accepted this API Agreement ("**You**").

You license Epic Software that enables You to create, maintain, and receive Electronic Health Information and other data. In May 2020, the Department of Health and Human Services Office of the National Coordinator published the [21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program final rule](#) ("**ONC Rule**"), which created new responsibilities for healthcare organizations to make EHI available to patients and third parties. To help You fulfill Your responsibilities under the ONC Rule, Epic has streamlined the way in which it makes certain standards-based and Epic-developed APIs available to expand Your ability to access, exchange, and use EHI across Your organization and with third parties.

This API Agreement provides You with a license to: (1) use the open.epic Components across Your enterprise, and (2) use the open.epic APIs with, and sublicense use of the open.epic APIs to, third parties (whether chosen by You or Your patients), all subject to the terms below and in conjunction with Your licensed use of Epic Software. The open.epic APIs are a subset of the interoperability technology Epic provides, and other APIs may be available through different licensing methods and programs. This API Agreement applies only to the open.epic Components and does not apply to any other APIs or interoperability technology made available by Epic.

In consideration of the mutual covenants set forth below, Epic and You agree as follows:

1. **Definitions.** All capitalized terms used in this API Agreement will have the meanings assigned to them in this API Agreement (including in [Appendix A](#)).
2. **License.** For the term of this API Agreement (as described in Section 8), Epic grants You a non-exclusive, non-transferable license to: (a) use the open.epic Components across Your enterprise (including with affiliated healthcare organizations that are permitted to access Your Epic Software), and (b) use the open.epic APIs with, and sublicense use of the open.epic APIs to, API Users, in each case of (a) or (b) subject to this API Agreement and only in conjunction with Your licensed use of Epic Software. The license to the open.epic APIs includes the rights reasonably necessary for You and API Users to access and use the open.epic APIs with Your Epic Software environments. This license enables You to develop, market, offer, and distribute Products designed to interact with the open.epic APIs and to enable API Users to do the same; provided that any use of Epic's name or logos must follow Epic's Trademark Usage Guidelines for [Epic Customers](#) and [third parties](#). This API Agreement does not give You ownership of any part of the open.epic Components. You are responsible to Epic for all use of the open.epic Components under this API Agreement, whether by You or others You permit to use any open.epic Component.
3. **Responsibilities, API User Requirements, and Infrastructure.**
  - a. **Responsibilities.** This API Agreement gives You the right to control how Products interact with Your Epic Software using the open.epic Components. With this freedom comes the responsibility to make sure all Products are behaving appropriately, whether those Products interact with Your Epic Software via patient-directed connections or otherwise. Products that connect to Your Epic Software could create issues such as: data corruption in Your Epic or other downstream systems; mapping or saving data to patient records incorrectly (e.g., sending correct data to the wrong patient or incorrect data to the right patient); fraudulent or other unethical conduct (e.g.,

*inappropriately prescribing narcotics or zeroing out a balance due); degraded system response times, performance, or availability; and security vulnerabilities or privacy breaches, including by acting as a vector for hacking, ransomware, or other cybersecurity attacks. These risks are more significant for Products that write data into Your Epic Software.*

*Epic will not test or otherwise oversee the Products that interact with Your Epic Software, and You should not assume that Epic has tested those interactions in any way. It is Your responsibility to ensure the open.epic Components and interactions between Your Epic Software and Products operate as You intend, including by doing each of the following to the extent permitted by applicable law and consistent with the last paragraph of this Section 3.a.:*

- i. vetting each API User and its Product(s) to assure Yourself of the accuracy, completeness, and appropriateness of any Products before You enable such Product to interact with the open.epic APIs and Your Epic Software;*
- ii. ensuring each API User [appropriately registers](#) its Product(s) on open.epic.com;*
- iii. testing and, as applicable, authorizing all open.epic Components and Products that interact with Your Epic Software across all Your intended use cases (including testing each Product in Your non-production environments after Updates and after functionality or configuration changes to Your Epic Software or the Products);*
- iv. ensuring that interactions with the open.epic Components and their consequences in Your Epic Software are tested (e.g., are APIs being called in the right sequence, is the timing between API calls appropriate, and is data from APIs filing correctly in Your Epic Software?) and that any issues are addressed promptly;*
- v. confirming appropriateness of configuration decisions (including workflow modifications, the use and mapping of appropriate terminologies, and the scope of data to release) that You make regarding each open.epic Component and its use with Products;*
- vi. confirming the accuracy, completeness, and relevance of information made available to or from Products via any open.epic Component;*
- vii. ensuring API Users and their Product(s) meet Your organization's security and privacy requirements, and appropriate audit trails are maintained in each such Product;*
- viii. ensuring all use of the open.epic Components is in accordance with the Support Materials;*
- ix. establishing unavailability procedures that will permit You to preserve Your operations if an open.epic Component or Product becomes unavailable;*
- x. maintaining appropriately current versions of Your Epic Software, including promptly applying updates to Your Epic Software to address identified issues with open.epic Components;*
- xi. assessing, planning for, and mitigating potential impacts of planned or unplanned downtimes of Your Epic Software on API Users and Products; and*
- xii. evaluating, planning for, and mitigating any negative impact on the performance of Your Epic Software due to Your use of or integration with Products (including impacts that affect individuals or other entities' ability to use Your Epic Software or might require You to obtain additional hardware or software).*

***Accordingly, as between You and Epic, You are solely responsible for all liabilities and consequences (including the risks described in the preceding paragraphs, non-compliance of***

**any Product with applicable laws and regulations, and any Claims by or on behalf of patients or related to patient harm) that arise from or relate to the use of or inability to use any Product.**

Pursuant to the ONC Rule and requirements under the CMS Promoting Interoperability Program for patient electronic access, Your patients should be able to access EHI through certain APIs and EHI Export. Therefore, clauses 3(a)(i)-(viii) above do not apply when You use the open.epic Components to respond to requests to access, exchange, and use EHI that originate from Your patients (including Products chosen by Your patients) or from API Users acting on behalf of Your patients pursuant to a valid authorization or consent.

- b. API User Requirements.** If You elect to sublicense the use of the open.epic APIs to API Users pursuant to a written agreement with such API Users, You will require each API User that is granted a sublicense to:
- i. not materially interfere in any way with the operation of the open.epic APIs, Epic Software, or any server, network, or system associated with the open.epic APIs or Epic Software, including in ways that could create a risk of patient harm or disrupt Your users' ability to use Epic Software;
  - ii. not attempt to breach, defeat, bypass, remove, deactivate, or otherwise circumvent any firewall, encryption, security, authentication routines, or software protection mechanisms in the open.epic APIs or Epic Software, including any such mechanism used to restrict or control the functionality of the open.epic APIs; and
  - iii. warrant that its Product, if applicable, does not contain and will not introduce any viruses or other harmful or malicious or insecure code, software, computer instructions, devices, or techniques that may threaten, infect, damage, disable, or shut down the open.epic APIs or Epic Software, or any related software, hardware, or computer systems (e.g., no viruses, worms, Trojan horses, malware, etc.).
- c. Infrastructure.** You are responsible for all Your own costs to use the open.epic Components and sublicense use of the open.epic APIs, including any costs from Your hosting or infrastructure provider. You are responsible for maintaining the appropriate software, hardware, and other technology needed for You to use the open.epic Components and for API Users to use the open.epic APIs.
- 4. Use Considerations and Recommendations.** Epic provides information on recommended practices when working with the open.epic Components and API Users at <https://open.epic.com>. This information might be a useful reference as You evaluate how You will use the open.epic Components and work with API Users as a part of Your overall interoperability efforts.

## **5. Subscription and Other Fees.**

### **a. Subscription Fees.**

- i. The open.epic APIs are licensed on a subscription fee basis. You will pay Epic subscription fees at the Subscription Rate applicable to the open.epic Core Functionality and to other open.epic APIs You use. The "**Subscription Rate**" means the then-current standard subscription rate charged by Epic for each open.epic API or group of open.epic APIs. EHI Export and Your [Internal and Other Eligible Use](#) of open.epic APIs that are not open.epic Core Functionality will not incur subscription fees under this API Agreement. The current Subscription Rates for the open.epic APIs are available on the [open.epic API Pricing Information](#) summary.
- ii. The open.epic Core Functionality includes certain functionality that participants in CMS payment and other quality reporting programs are expected to implement and use as part

of certified EHR technology. Therefore, subscription fees for open.epic Core Functionality are payable regardless of Your actual use of such functionality.

- iii. Subscription fees will be payable on a quarterly basis, with each fee due within 30 days after the end of the quarter with respect to which the subscription fee is payable, subject to Section 5.b. below. Subscription fees for the open.epic APIs will be calculated and chargeable separately for each Production Directory (see the [open.epic API Pricing Information summary](#)).

**b. Subscription Fee On-Ramp.**

- i. If You first accepted the terms of this API Agreement through open.epic by October 2, 2020, Your subscription fees payable under Section 5.a. for the open.epic APIs will be adjusted in accordance with the following table:

	USCDI v1 FHIR APIs	Use of Industry-Standard and Epic Public APIs in Qualifying Established Connections	Eligible Epic Public APIs used in Qualifying Established Connections for which Epic did not previously charge You or API Users
10/2/20 to 3/31/22	No subscription fees payable	No subscription fees payable	No subscription fees payable
4/1/22 to 3/31/23	Subscription fees payable at the Subscription Rate	No subscription fees payable	No subscription fees payable
4/1/23 to 3/31/24	Subscription fees payable at the Subscription Rate	Subscription fees payable at the Subscription Rate with a 50% discount	No subscription fees payable
4/1/24 onwards	Subscription fees payable at the Subscription Rate	Subscription fees payable at the Subscription Rate	No subscription fees payable

- ii. If You first accepted the terms of this API Agreement through open.epic between October 3, 2020 and March 3, 2021, Your subscription fees payable under Section 5.a. for eligible Epic Public APIs that (A) You use in Qualifying Established Connections, and (B) Epic did not previously charge You or API Users for, will be determined in accordance with the following table based on the date of that acceptance:

Acceptance Date of this API Agreement	Eligible Epic Public APIs used in Qualifying Established Connections for which Epic did not previously charge You or API Users
10/3/20 to 12/2/20	Subscription fees payable at the Subscription Rate with an 80% discount
12/3/20 to 1/4/21	Subscription fees payable at the Subscription Rate with a 60% discount
1/5/21 to 2/3/21	Subscription fees payable at the Subscription Rate with a 40% discount

2/4/21 to 3/3/21

Subscription fees payable at the Subscription Rate  
with a 20% discount

- iii. *If You first accept or accepted the terms of this API Agreement after March 3, 2021, Sections 5.b.i and 5.b.ii do not apply.*
- c. **Certain Previously Licensed Epic Public APIs.** *You may have previously licensed certain Epic Public APIs separately, including as interface/connector units, pursuant to another agreement between You and Epic. Any interface/connector unit volume attributable to Epic Public APIs You previously licensed under a separate agreement with Epic is removed from that agreement upon Your entry into this API Agreement, and thereafter the terms of this API Agreement will govern all use of Epic Public APIs. However, the initial fees chargeable for any previously licensed Epic Public APIs used in Qualifying Established Connections will be payable in the amounts provided in that other agreement between You and Epic (rather than at the rates provided under Section 5.a. or 5.b. above) and may be adjusted as provided in this API Agreement. For clarity, there are no Industry-Standard APIs that were previously licensed to You as interface/connector units.*
- d. **Ending or Suspending Use.** *You may end or temporarily suspend Your use of any of the open.epic APIs at any time, and Your subscription fees will be updated to reflect usage per Sections 5.a. and 5.b. above. In addition, You may stop accruing subscription fees for all of the open.epic Components on a prospective basis beginning as of the first day of the billing quarter following the then-current billing quarter if You: (i) notify Epic of such intention at least 30 days prior to the end of the then-current billing quarter; and (ii) You end all use of the open.epic Components, affirm to Epic that You have ended all such use, and permit Epic to disable Your access to the open.epic Components by the end of the then-current billing quarter. Your rights under this API Agreement will be suspended during any period in which You stop paying subscription fees. If You later resume use of any open.epic Component, Your use will be subject to the then-current fees and terms.*
- e. **Additional Services.** *Epic will charge You at its then-current rates for any additional services that You and Epic mutually agree upon (beyond the maintenance and support described in Section 6 below), including any consultation and assistance for Product-related issues or software modification services You request for an open.epic Component. Categories of additional services available for the open.epic APIs are listed in the [open.epic API Pricing Information](#) summary. All hourly fees under this API Agreement are due as incurred and payable as specified on the invoice for such fees. In connection with use of the open.epic Components, You also may require additional software, hardware, and services, which may result in additional charges, including from Your hosting or infrastructure provider.*
- f. **Payments and Invoicing.** *You will pay fees due under this API Agreement as specified on the invoice for such fees. Interest will accrue for overdue amounts at the lesser of one percent (1%) per month or the maximum rate allowed by law. Your non-payment of any fees under this API Agreement will be a material breach.*
- g. **Taxes.** *Any amounts payable by You under this API Agreement are exclusive of taxes and similar assessments. You are responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental or regulatory entity on any amounts payable by You under this API Agreement, other than any taxes imposed on Epic's income.*
6. **Support for open.epic Components by Epic.** *As long as You are participating in Epic's maintenance program for qualifying Epic Software and paying all fees due in accordance with Section 5, Epic will provide maintenance and support for the open.epic APIs and EHI Export, which may include: (a) consultation and assistance, including reasonable cooperation with You and API Users, to help You enable use of such open.epic Components with Epic Software, (b) Updates, and (c) reasonable*

workarounds when necessary to help address Code Errors. Epic may have access to and may receive Protected Health Information (as defined in HIPAA) from You in connection with its provision of services for the open.epic Components. Any access to Protected Health Information pursuant to Epic's performance under this API Agreement will be governed by the HIPAA business associate terms in place between You and Epic pursuant to a separate agreement, but any liability between the parties related to such access will be governed solely by this API Agreement.

Epic's support under this Section 6 does not include troubleshooting or correcting issues with Products or other non-Code Errors, such as issues that may be caused by Products interacting with Your Epic Software via the open.epic Components. These issues may include data corruption or other data-related errors, security vulnerabilities, privacy breaches, user or system performance degradation, downtimes, or failure of Products and Epic Software to function with one another as intended, including when You make configuration changes or updates to Epic Software.

- 7. Changes to these Terms and the open.epic Components.** Epic may change this API Agreement from time to time in accordance with this Section 7, and changes will be effective upon the date specified by Epic. Epic will inform You of (a) any material changes to Your obligations under this API Agreement at least 90 days in advance of the effective date of such changes, and (b) any increases to the Subscription Rates for the open.epic Components at least 12 months in advance of the effective date of such increases. However, modifications to this API Agreement to reflect changes to the law or regulatory guidance will become effective immediately. Your continued use of any open.epic Component after changes to this API Agreement (including to the Subscription Rates) become effective means that You have accepted the changes. Epic also may modify, temporarily suspend, or discontinue certain APIs or other open.epic Components from time to time in its sole discretion, subject to the remainder of this section. Epic will make reasonable efforts to inform You in advance of discontinuing any open.epic APIs that You are then using in Your production environments. In addition, except as exigent circumstances require, Epic will provide You advance notice of any material changes to the open.epic Certified APIs or related terms of this API Agreement to give You a reasonable opportunity to work with API Users to preserve compatibility with the open.epic Certified APIs and comply with such updated terms. Epic will make reasonable efforts to avoid disrupting Your use of the open.epic Certified APIs.
- 8. Term and Termination.** This API Agreement is effective as of the date You first accept any version of its terms. This API Agreement (including all licenses and sublicenses granted under its terms) will continue in effect until it is terminated in accordance with this Section 8, subject to any suspension of rights under Section 5.d. You may end all use of the open.epic Components in accordance with Section 5.d. above. In addition, a party (the "**Notifying Party**") may terminate this API Agreement if the other party (the "**Breaching Party**") materially breaches its obligations and does not cure the breach within 60 days of receipt of notice from the Notifying Party. The notice will be provided in accordance with Section 15.g., will state it is a notice of material breach of this API Agreement, and will describe the breach in sufficient detail to permit the Breaching Party to cure the breach. This API Agreement will automatically terminate if You are no longer an Epic Customer. In the event of any termination of this API Agreement, You will: (a) end all use of the open.epic Components, affirm to Epic that You have ended such use, and permit Epic to disable Your access to the open.epic Components; and (b) promptly pay Epic any outstanding fees that You incurred pursuant to this API Agreement prior to the effective date of such termination.
- 9. Confidentiality.** This API Agreement does not provide You a right to grant access to Epic Software or disclose other Epic Confidential Information, including any code for or used by an open.epic Component, to API Users or otherwise. For clarity, Support Materials are not Epic Confidential Information. Notwithstanding anything to the contrary (including in any other agreement You have entered into with Epic), as long as Epic remains subject to 45 CFR 170 as a developer of certified health IT, You are permitted to make certain communications about Epic's certified applications, in accordance with Section 4002 of the 21st Century Cures Act and 45 CFR 170.403 (the "**Communications Rule**"). You recognize that Epic needs to avoid outright copying of its intellectual property by third parties to remain viable as a company. To help support this, You will ensure that any communications involving Epic Confidential Information are within the scope of the protected

subject areas in the Communications Rule, and that each such communication follows the "Communications About Epic Software Under the ONC Communications Rule" overview, as updated from time to time at <https://www.epic.com/commsrulepolicy>, including that each communication uses the least amount of Epic Confidential Information necessary to fulfill its purpose.

**10. Disclaimers.** The open.epic Components may include inaccuracies and errors. Use of any open.epic Component is at Your own discretion and risk. Epic provides You the open.epic Components AS-IS WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND. ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE DISCLAIMED, INCLUDING WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND TITLE, AND ANY IMPLIED WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE OPEN.EPIC COMPONENTS OR OPEN.EPIC.COM OR AGAINST INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, AND ANY IMPLIED WARRANTIES THAT THE OPEN.EPIC COMPONENTS ARE ERROR-FREE. Epic makes no representations or warranties as to, and disclaims any responsibility for, the accuracy, completeness, integrity, or compliance of any Product, any data transmitted by or through open.epic Components, or any information calculated or derived from that data anywhere in Epic Software or in third-party software. For clarity, this Section 10 is not intended to reduce or limit Epic's support commitments as set out in Section 6 of this API Agreement.

**11. Indemnification.** Access to the open.epic Components through Your Epic Software will be under Your control, and Epic will have limited knowledge of the Products using the open.epic Components to interact with Your Epic Software. You are responsible for making Your own determination as to the suitability of the open.epic Components for Your purposes prior to use. Epic cannot and does not endorse, certify, or verify the functionality, integrity, safety, security, performance, or practices of the developers who use the open.epic Components or their software. Therefore, You agree that to the extent permitted by the law applicable to You, You will indemnify, defend, and hold harmless Indemnitees from and against any Claim brought by a third party arising out of this API Agreement or in any way related to the use of or inability to use any open.epic Component, including any Claim by a third party relating to its use of or inability to use an open.epic Component on Your behalf or for Your benefit or on behalf of a patient. You will obtain Epic's written consent before entering into any judgment or settlement that involves an Indemnitee.

The indemnification under this Section 11 will not apply to a Claim if a court makes a final determination that each of the following is true with respect to that Claim: (a) Epic's negligence with respect to a Code Error is greater than fifty percent (50%) of the aggregate negligence giving rise to the Claim, and (b) the Claim was in no way caused by any failure to use any open.epic Component appropriately and in accordance with the Support Materials or to satisfy Your responsibilities in accordance with Section 3.a.

**12. Limitation on Liability.** NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, ENHANCED, CONSEQUENTIAL OR INDIRECT DAMAGES, OR LOSS OF BUSINESS, PROFIT OR REVENUE, ANTICIPATED SAVINGS, GOODWILL, OPPORTUNITY, OR REPUTATION, EVEN IF THAT PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR THEY WERE OTHERWISE FORESEEABLE. UNDER NO CIRCUMSTANCES WILL THE TOTAL MAXIMUM LIABILITY OF EITHER PARTY EXCEED, IN THE AGGREGATE FOR ALL CLAIMS ARISING OUT OF THIS API AGREEMENT OR RELATING TO ANY USE OF THE OPEN.EPIC COMPONENTS, THE GREATER OF (A) SEVEN THOUSAND DOLLARS (\$7,000) OR (B) THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID BY YOU TO EPIC PURSUANT TO THIS API AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE DATE THE LAST SUCH CLAIM WAS FILED. THE LIMITATIONS SET FORTH IN THIS SECTION WILL NOT APPLY TO YOUR OBLIGATIONS UNDER SECTION 11 OF THIS API AGREEMENT OR YOUR OBLIGATIONS TO EPIC FOR FEES PAYABLE IN ACCORDANCE WITH THIS API AGREEMENT. FURTHERMORE, NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FEES PAID PURSUANT TO THIS API AGREEMENT WILL NOT INCREASE EITHER PARTY'S TOTAL MAXIMUM LIABILITY TO THE OTHER PARTY UNDER ANY OTHER AGREEMENT YOU HAVE ENTERED INTO WITH EPIC.

**13. Intellectual Property Claims.** If a third-party Claim of infringement of a patent, copyright, or trademark (in each case enforceable in the United States) is brought against You based on Your use

of the open.epic Components as made available to You pursuant to this API Agreement, You will promptly notify Epic in writing of the Claim. If such a Claim is brought, Epic may, among other things: (a) modify, replace, or remove the open.epic Component (in which case, Epic may modify or suspend charges to You for such open.epic Component); (b) procure the right for You to continue to use the open.epic Component that is the subject of the Claim; or (c) require You to procure the right to continue to use the open.epic Component that is the subject of the Claim (to the extent You would like to continue use of it).

**14. CCDS FHIR APIs included with MyChart.** As part of Your separate license to MyChart, Epic made available a collection of APIs that implement the DSTU2 version of the HL7 FHIR standard to enable You to provide to patients (or their authorized proxies) patient-controlled access to their own health information, including use with third-party software (collectively, these APIs are the "CCDS FHIR APIs"). The CCDS FHIR APIs were previously separate from the open.epic APIs made available under this API Agreement but are now licensed as part of the open.epic APIs under this API Agreement. As ONC Certification Criteria for HIT evolves, Epic may stop offering the DSTU2 CCDS FHIR APIs or may replace them with newer versions available under this API Agreement or other terms.

**15. Miscellaneous.**

- a. This API Agreement will be governed by and construed in accordance with the laws of Wisconsin, without reference to its conflicts of laws principles, and any action arising out of or relating to this API Agreement will be brought exclusively in Dane County, Wisconsin. You consent to the personal jurisdiction and venue of the state and federal courts located in Dane County, Wisconsin.
- b. A party's failure to enforce any provision of this API Agreement will not be construed as a waiver of such provision or prevent the party from subsequently enforcing such provision.
- c. Neither party will be liable for failure or delay in performing its obligations if such failure or delay is due to circumstances beyond such party's reasonable control, including acts of God, fire, acts of a common enemy, war, actual or threatened terrorism, third-party criminal acts, civil disturbance, embargo, law or governmental regulations, or labor dispute.
- d. Epic and You are independent contractors and not each other's agents. Except to the extent expressly specified, this API Agreement does not create third-party beneficiaries. Epic and You are not joint employers of the other's employees and do not have the right to make employment decisions about the other's employees.
- e. This API Agreement is the entire agreement between You and Epic regarding the open.epic Components; it supersedes all prior or contemporaneous representations, understandings, or agreements regarding the open.epic Components. The open.epic Components are governed exclusively by this API Agreement and not by any other agreement in place between You and Epic (i.e., notwithstanding anything to the contrary, the open.epic Components do not constitute "Program Property" as that term may be defined under a separate agreement between You and Epic, and any references to terms applicable to FHIR specifications in any separate agreements do not apply to the open.epic APIs).
- f. Nothing in this API Agreement is intended to preclude You from using a Product that replaces or supplements Epic Software.
- g. Notice required under this API Agreement will be delivered, if to You, via email to Your designated API Agreement point of contact and, if to Epic, to [contractadmin@epic.com](mailto:contractadmin@epic.com). At Your request, Epic will provide instructions to You on how to designate and/or modify Your API Agreement point of contact.



- h. The provisions of this API Agreement will be severable, so that if any provision is found unenforceable, it and related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose. However, severability will not apply if it materially changes the benefit of this API Agreement to either party.*
- i. Headings in this API Agreement will not affect the interpretation of this API Agreement. In this API Agreement, the words "include" and "exclude" and their variants are not words of limitation, and examples are for illustration and not limitation.*
- j. Epic may monitor Your use of the open.epic Components to verify Your compliance with this API Agreement, to inform its calculation of fees payable under this API Agreement, to develop or improve software and services, and to attempt to assess any potential quality, performance, and security impacts of Products on Epic Software.*
- k. ONC Health IT Certification information, including pricing and limitations, is available for reference here: [epic.com/MU](https://www.epic.com/MU).*
- l. Sections 3.a., 5, and 7-15 will survive any termination of this API Agreement.*

*The license provided to You under this API Agreement is expressly conditioned upon Your acceptance of and compliance with all the terms and conditions set forth in this API Agreement. If You do not accept this API Agreement, do *\*not\** click 'I accept.'*

*By clicking or having clicked 'I accept,' You warrant that the individual accepting this API Agreement on Your behalf has the power and authority to legally bind You and You accept the entirety of this API Agreement.*

## Appendix A

### **Definitions**

1. "API" means application programming interface.
2. "API User" means a person or entity that creates or makes available any Products that use or reference any open.epic APIs or related Support Materials.
3. "Claim" means all claims, demands, investigations, inquiries, and actions, and all liabilities, damages, fines, and expenses arising out of or relating thereto, including settlement costs and attorneys' fees.
4. "Code Error" means a reproducible error or defect in the code for EHI Export or an open.epic API that Epic reasonably determines results in its failure to operate in substantial conformity to descriptions of such operation in the applicable Support Material(s).
5. "EHI Export" means the functionality identified as "EHI Export" in the [open.epic API Pricing Information](#) summary.
6. "Electronic Health Information" or "EHI" has the meaning set out in [Section 171.102](#) of the Office of the National Coordinator's 21<sup>st</sup> Century Cures Act: Interoperability, Information Blocking and the ONC Health IT Certification Program final rule.
7. "Epic Confidential Information" means, except as provided below, the code for or used by any open.epic Component, as well as all information concerning: the functionality, operation, use, code, data structures, development, implementation, or maintenance of Epic Software. "Epic Confidential Information" excludes Support Materials, as well as information: (a) generally available to the public without fault by You; (b) rightfully known by You non-confidentially before Epic first provides You access to such information; (c) independently developed by You without the use of any Epic Confidential Information; or (d) rightfully obtained by You from a third party with the right to disclose it non-confidentially.
8. "Epic Customer" means a healthcare organization that is licensed to qualifying Epic Software pursuant to a license agreement with Epic and is implementing, or participating in Epic's maintenance program for, such software.
9. "Epic Software" means any software licensed or otherwise developed and provided by Epic pursuant to a separate agreement.
10. "HIPAA" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
11. "HL7 FHIR" and "FHIR" mean Fast Healthcare Interoperability Resources, industry-standard application programming interfaces for healthcare published by Health Level Seven International.
12. "Indemnitees" means Epic, its Owned Entities, and all employees, officers, directors, and contractors of Epic and its Owned Entities.
13. "Internal and Other Eligible Use" means a use of open.epic APIs that meets the waiver criteria set out in the policy statement available at <https://galaxy.epic.com/InternalUsePolicyforAPIs>.
14. "ONC Certification Criteria for HIT " means the criteria in the Office of the National Coordinator's framework for the certification of health IT set out at 80 Federal Register 62601 – 62759 and 45 CFR Part 170.
15. "open.epic APIs" mean the APIs listed on <https://open.epic.com/oeAPIList>.

16. "open.epic Certified APIs" means the USCDI FHIR APIs that are certified under the ONC Certification Criteria for HIT, as and to the extent described at [epic.com/MU](https://epic.com/MU).
17. "open.epic Component" means each of the open.epic APIs, EHI Export, and the Support Materials. All such components are collectively referred to as the "open.epic Components."
18. "open.epic Core Functionality" means (a) the USCDI FHIR APIs and (b) any future open.epic APIs or versions of open.epic APIs that Epic may designate as "open.epic Core Functionality" in the [open.epic API Pricing Information](#) summary.
19. "Owned Entity" means an entity that (a) directly or indirectly owns or controls more than fifty percent of Epic, or (b) is more than fifty percent owned or controlled, directly or indirectly, by Epic or an entity described in clause (a).
20. "Product" means any software, component, service or other offering, other than Epic Software, that uses or references any open.epic Component, and includes any offering developed by You.
21. "Production Directory" means each (a) copy of Epic Software code used to process actual patient data, and (b) actual patient database exceeding one (if any) processed by the same Epic Software code.
22. "Qualifying Established Connection" means each connection established between Your Epic Software and Products by October 2, 2020.
23. "Support Materials" means any information (in any format) related to the open.epic APIs or EHI Export that Epic provides to You under this API Agreement through open.epic, as may be updated from time to time, including documentation, tutorials, sandboxes, testing tools, forms, questionnaires, and client IDs for app registration.
24. "Update" means an improvement or patch to an existing open.epic Component (with error corrections, enhancements, or extensions) that Epic generally makes available free of charge to its similarly situated customers under the open.epic licensing framework. Updates are limited to functionality described as included in EHI Export or an open.epic API in its applicable Support Material(s).
25. "USCDI FHIR APIs" means the open.epic APIs identified as "USCDI FHIR APIs" at <https://open.epic.com/oeAPIList>, which enable You to respond to requests to access, use, or exchange Electronic Health Information in the U.S. Core Data for Interoperability data set.