

This is a reference-only copy of the Epic QHIN Participation Agreement and is not for signature. To join TEFCA, please contact your Epic BFF to request your copy of the agreement.

## INTRODUCTION

The Epic community have long been leaders in interoperability to improve patient care, starting with Care Everywhere in 2007 and continuing with Epic’s support of Carequality beginning in 2016. The Trusted Exchange Framework and Common Agreement (TEFCA), a new health information network sponsored by the Office of the National Coordinator for Health Information Technology (ONC), represents the next era of interoperability. TEFCA aims to improve and simplify connectivity across a broad set of use cases—starting with treatment. ONC intends for TEFCA to improve patient care by expanding Participants’ connectivity to the 30% of provider organizations that are not participating in national networks today and by streamlining exchange for additional use cases in the future.

Epic has established a Qualified Health Information Network (QHIN) that enables organizations to participate in exchange via TEFCA. All Participants in TEFCA enter a QHIN-Participant agreement that governs exchange in the TEFCA ecosystem through a consistent minimum set of terms and expectations. These terms are designed to ensure that all members of the TEFCA community are operating under the same expectations, regardless of the QHIN to which each organization connects. The current terms of the Epic QHIN Participation Agreement are below. The current Epic QHIN Participation Agreement and Epic QHIN Policies are also available on [Galaxy](#) for easy reference in the future.

### Epic QHIN Agreement

This Epic QHIN Agreement (the “Agreement”) is made by and between [REDACTED] (the “Participant”) and Epic Nexus, Inc. (“Epic”), effective as of the date Participant executes this Agreement (the “Effective Date”). Participant and Epic may be referred to in the Agreement as a “Party” or referred to collectively as “Parties”

WHEREAS, Epic has created a Qualified Health Information Network (the “Epic QHIN”);

WHEREAS, Participant wishes to participate in the Epic QHIN; and

WHEREAS, Participant, by signing this Agreement, agrees to be bound by its terms and become an Epic QHIN Participant if approved as such.

NOW, THEREFORE, in consideration of the premises set forth above and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions:** As used herein, the following terms have the following meanings:
  - 1.1. “Applicable Law” means all federal, state, local, or tribal laws and regulations then in effect and applicable to the subject matter herein. For the avoidance of doubt, federal agencies are only subject to federal law.
  - 1.2. “Business Associate” has the meaning assigned to such term at 45 CFR § 160.103.
  - 1.3. “Common Agreement” means the Common Agreement for Nationwide Health Information Interoperability published by the U.S. Department of Health and Human Services, Office of the National Coordinator of Health Information Technology, including the QHIN Technical Framework, the Standard Operating Procedures and all other attachments, exhibits, and artifacts incorporated by reference therein.
  - 1.4. “Confidential Information” means any information that is designated as Confidential Information by the Discloser, or that a reasonable person would understand to be of a confidential nature, which is disclosed to a Recipient pursuant to this Agreement or the Common Agreement. For the avoidance of doubt, “Confidential Information” does not include electronic protected health information (ePHI) that is subject to a Business Associate Agreement and/or other provisions of this Agreement or the Common Agreement. “Confidential Information” does not include any information that: (i) is or becomes known publicly through no fault of the Recipient; (ii) is learned by the Recipient from a third party that the Recipient reasonably believes is entitled to disclose it without restriction; (iii) is already known to the Recipient before receipt from the Discloser, as shown by the Recipient’s

written records; (iv) is independently developed by Recipient without the use of or reference to the Discloser's Confidential Information, as shown by the Recipient's written records, and was not subject to confidentiality restrictions prior to receipt of such information from the Discloser; or (v) must be disclosed under operation of law, provided that, to the extent permitted by Applicable Law, the Recipient gives the Discloser reasonable notice to allow the Discloser to object to such redisclosure, and such redisclosure is made to the minimum extent necessary to comply with Applicable Law.

- 1.5. "Connectivity Services" means the technical services provided by a QHIN with respect to Exchange Purposes consistent with the requirements of the then-applicable QHIN Technical Framework and pursuant to this Agreement or the Common Agreement.
- 1.6. "Contribution" means any submission by a Discloser to Epic intended by the Discloser to be considered for inclusion in, or to support, the Epic QHIN, including comments submitted on any media, oral discussions at meeting of any work group, committee or sub-committee or other types of submissions.
- 1.7. "Covered Entity" has the meaning assigned to such term at 45 CFR § 160.103.
- 1.8. "Disclosure" (including its correlative meanings "Disclose", "Disclosed", and "Disclosing") means the release, transfer, provision of access to, or divulging of any manner of TEFCA Information outside of the entity holding the information.
- 1.9. "Discloser" means a person or entity that discloses Confidential Information pursuant to this Agreement or the Common Agreement.
- 1.10. "Dispute" means (i) a disagreement about any provision of this Agreement, the Common Agreement, an SOP, an Epic QHIN Policy, or any other attachment, exhibit, and artifacts incorporated by reference; or (ii) a concern or complaint about the actions, or any failure to act, of a QHIN Participant, the RCE, another QHIN, or another QHIN's Participants.
- 1.11. "Dispute Resolution Process" means a formal process established by an exchange framework by which Disputes relating to exchange activities or the exchange framework may be resolved.
- 1.12. "Downstream Subparticipant" means a Subparticipant that has entered into a Downstream Subparticipant Agreement to use the services of the Upstream Subparticipant to send and/or receive information for one or more Exchange Purposes.
- 1.13. "Downstream Subparticipant Agreement" means an agreement that incorporates all of the required Flow-Downs of the Common Agreement and is between an Upstream Subparticipant and one or more Downstream Subparticipants, which enables the Downstream Subparticipant(s) to use the services of the Upstream Subparticipant to send and/or receive information for one or more Exchange Purposes; provided, however, that any provisions of said agreement that permit or require activities other than those required or permitted by the Common Agreement shall not be deemed part of the Downstream Subparticipant Agreement. For example, if the agreement provides for transmission of information for reasons other than the Exchange Purposes, the provisions governing such activities shall not be deemed part of the Downstream Subparticipant Agreement. Any Subparticipant may enter a Downstream Subparticipant Agreement.
- 1.14. "Electronic Health Information" has the meaning assigned to such term at 45 CFR § 160.103.
- 1.15. "Epic Parent Entity" means Epic Systems Corporation, located at 1979 Milky Way, Verona, Wisconsin 53593.
- 1.16. "Epic QHIN IP" means any copyrights, patent rights, trade secrets, trademarks, service marks, trade dress, and other intellectual property in or related to Epic or the Epic QHIN including, but not limited to, this Agreement and all Exhibits, Implementation Guides, Epic QHIN Policy Documents, related materials, information, reports, and processes.
- 1.17. "Epic QHIN Participant" means a U.S. entity, regardless of whether the entity is a Covered Entity or a Business Associate, that has entered into an agreement whereby the Epic QHIN agrees to

transmit and receive information via QHIN-to-QHIN exchange on behalf of the party for the Exchange Purposes.

- 1.18. “Epic QHIN Policy” means the policies and procedures adopted by Epic to govern the exchange of TEFCA Information via the Epic QHIN in accordance with the principles and requirements of the Common Agreement.
- 1.19. “Epic QHIN Use Cases” means the combination of a set of functional needs and a particular technical architecture for addressing those needs, for which an Implementation Guide has been adopted.
- 1.20. “Exchange Purpose(s)” means the reason, as authorized by the Common Agreement including the Exchange Purposes SOP, for a Request, Use, Disclosure, or Response transmitted via QHIN-to-QHIN exchange as one step in the transmission. Authorized Exchange Purposes are: Treatment, Payment, Health Care Operations, Public Health, Government Benefits Determination, Individual Access Services, and any other purposes authorized as an Exchange Purpose by the Exchange Purposes SOP, each to the extent permitted under Applicable Law, under all applicable provisions of this Agreement, the Common Agreement, an applicable Epic QHIN Policy, and, if applicable, the implementation SOP for the Exchange Purpose.
- 1.21. “Framework Agreement” means any one or combination of this Agreement, the Common Agreement, a Participant-Subparticipant Agreement, a Participant-Subparticipant Agreement, or a Downstream Subparticipant Agreement, as applicable.
- 1.22. “Flow-Down” means the rights and obligations set forth within the Common Agreement that Epic is obligated to incorporate into this Agreement, that Epic is required to obligate Participant to include in any Subparticipant Agreements, and that Epic must require Participant to obligate Subparticipants to impose on their Downstream Subparticipants through their Downstream Subparticipant Agreements, if any. Provisions of this Agreement containing such rights and obligations are identified in Section 16.5 of this Agreement.
- 1.23. “FTC Rule” means the Health Breach Notification Rule promulgated by the Federal Trade Commission set forth at 16 CFR Part 318.
- 1.24. “Government Benefits Determination” means a determination made by any federal, state, local, or tribal agency, instrumentality, or other unit of government as to whether an Individual qualifies for government benefits for any purpose other than health care (for example, Social Security disability benefits) to the extent permitted by Applicable Law. Disclosures of TI for this purpose may require an authorization that complies with Applicable Law.
- 1.25. “Governing Council” means the group that supervises the activities and operation of the Epic QHIN as detailed in the Epic QHIN Policy: Governance Operating Procedures.
- 1.26. “Government Health Care Entity” means any agency, instrumentality, or other unit of the federal, state, local, or tribal government to the extent that it provides health care services (e.g., Treatment) to Individuals but only to the extent that it is not acting as a Covered Entity.
- 1.27. “Health Care Provider” has the meaning assigned to such term at 45 CFR § 164.501, except that this term shall apply to applicable activities regardless of whether the Health Care Provider is a Covered Entity.
- 1.28. “HIPAA Rules” means the regulations set forth at 45 CFR Parts 160, 162, and 164.
- 1.29. “HIPAA Privacy Rule” means the regulations set forth at 45 CFR Parts 160 and 164, Subparts A and E.
- 1.30. “HIPAA Security Rule” means the regulations set forth at 45 CFR Part 160 and Part 164, Subpart C.
- 1.31. “Implementation Guide” means a guide adopted by Epic that sets forth the technical specifications and additional business rules that apply to Epic QHIN Participants who intend to send and/or receive information for one or more Exchange Purposes.

- 1.32. “Individual” means one or more of the following: (i) an Individual as defined by 45 CFR 160.103; (ii) any other natural person who is the subject of the information being Requested, Used, or Disclosed; (iii) a person who legally acts on behalf of a person described in (i) or (ii) of this definition in making decisions related to health care as a personal representative, in accordance with 45 CFR 164.502(g); (iv) a person who is a legal representative of and can make health care decision on behalf of any person described in (i) or (ii) of this definition; or (v) an executor, administrator, or other person having authority to act on behalf of a deceased person described in (i) or (ii) of this definition or the individual’s estate under Applicable Law.
- 1.33. “Individually Identifiable Information” means information that identifies an Individual or with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.
- 1.34. “Non-HIPAA Entity” means a QHIN, Participant, or Subparticipant that is neither a Covered Entity nor a Business Associate under HIPAA with regard to activities under this Agreement or the Common Agreement.
- 1.35. “Participant” means a U.S. entity that has entered into an agreement with a QHIN whereby the QHIN agrees to transmit and receive information via QHIN-to-QHIN exchange on behalf of the other party to the agreement for the Exchange Purposes.
- 1.36. “Participant-Subparticipant Agreement” means an agreement that incorporates all of the Required Flow-Downs of the Common Agreement and is between a QHIN Participant and one or more Subparticipants, which enables the Subparticipant(s) to use the services of the Participant to send and/or receive information for one or more Exchange Purposes; provided, however, that any provisions of said agreement that permit or require activities other than those required or permitted by the Common Agreement shall not be deemed part of the Participant-Subparticipant Agreement. For example, if the agreement provides for transmission of information for reasons other than the Exchange Purposes, the provisions governing such activities shall not be deemed part of the Participant-Subparticipant Agreement as defined herein.
- In the event of any conflict or inconsistency between or among Applicable Law, the Participant-Subparticipant Agreement, and any other terms and conditions, the following shall be the order of precedence to the extent of such conflict or inconsistency: (i) Applicable Law; (ii) the provisions of the Participant-Subparticipant Agreement that are Required Flow-Downs under the Common Agreement; (iii) to the extent applicable, the QHIN-Technical Framework; (iv) to the extent applicable, the SOPs; (v) this Agreement; (vi) to the extent applicable, the Epic QHIN Policies; and (vii) any other terms and conditions agreed to be the parties.
- 1.37. “Privacy and Security Notice” means a publicly available written notice of privacy and security practices.
- 1.38. “Protected Health Information” or “PHI” has the meaning assigned to such term at 45 CFR § 160.103.
- 1.39. “Public Health Authority” has the meaning assigned to such term at 45 CFR § 164.501.
- 1.40. “QHIN Participant” means a U.S. entity, regardless of whether the entity is a Covered Entity or a Business Associate, that has entered into an agreement whereby a QHIN agrees to transmit and receive information via QHIN-to-QHIN exchange on behalf of the party to the agreement for the Exchange Purposes.
- 1.41. “QHIN Technical Framework” or “QTF” means the document incorporated by reference into this Agreement, that may include: (i) technical requirements, functional requirements, and privacy and security related requirements for the exchange of TI between QHINs; and (ii) technical, privacy, and security flow-down requirements for the QHIN to the QHIN Participants and/or Subparticipants (if any) in addition to the privacy and security Flow-Downs of the Common Agreement.
- 1.42. “RCE Directory Service” means a technical service provided by the RCE that enables QHINs, Participants, and Subparticipants to share directory information associated with other QHINs, Participants, and Subparticipants in order to enable the exchange of TI under the Common

Agreement. The then-current technical endpoints and other identifying information of QHINs, Participants, and Subparticipants are included and maintained as part of the RCE Directory Service.

- 1.43. “Recipient” means a person or entity that receives Confidential Information from a Discloser pursuant to this Agreement or the Common Agreement.
- 1.44. “Recognized Coordinating Entity” or “RCE” means the entity selected by the ONC that will enter into the Common Agreement with QHINs in order to impose, at a minimum, the requirements of the Common Agreement, including the SOPs and the QTF, on the QHINs and administer such requirements on an ongoing basis.
- 1.45. “RCE Dispute Resolution Process” means the non-binding Dispute resolution process set forth within an SOP to establish a method of resolving Disputes connected to Exchange Activities under the Common Agreement.
- 1.46. “Request” (including its correlative uses/tenses “Requested” and “Requesting”) means the act of asking for information in accordance with the applicable requirements of the Framework Agreements.
- 1.47. “Required Information” means electronic information maintained by any QHIN, Participant, or Subparticipant prior to or during the term of the applicable Framework Agreement: (i) that would be ePHI if maintained by a Covered Entity or a Business Associate; and (ii) regardless of whether the information is or has already been transmitted via QHIN-to-QHIN exchange.
- Notwithstanding the foregoing, the following types of information are not Required Information: (a) information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; or (b) psychotherapy notes (as defined at 45 CFR § 164.501).
- 1.48. “Response” (including its correlative uses/tenses “Responded” and “Responding”) means the act of providing information or the information provided in accordance with the applicable requirements of the Framework Agreements.
- 1.49. “Standard Operating Procedure(s)” or “SOP(s)” means a written procedure or other provision that is adopted by the RCE pursuant to the Common Agreement and incorporated into the Common Agreement to provide detailed information or requirements related to the exchange activities under the Common Agreement, including all amendments thereto and any new SOPs that are adopted pursuant to the Common Agreement.
- 1.50. “Subparticipant” means a U.S. Entity, regardless of whether the entity is a Covered Entity or Business Associate, that has entered into either: (i) a Participant-Subparticipant Agreement to use the services of a Participant to send and/or receive information; or (ii) a Downstream Subparticipant Agreement pursuant to which the services of a Subparticipant are used to send and/or receive information.
- 1.51. “TEFCA Information” or “TI” means any information that is exchanged between QHINs for one or more of the Exchange Purposes pursuant to any of the Framework Agreements. As a matter of general policy, once TI is received by a QHIN, Participant, or Subparticipant that is a Covered Entity or Business Associate and is incorporated into such recipient’s system of records, the information is no longer TI and is governed by the HIPAA Rules and other Applicable Law.
- 1.52. “TEFCA Security Incident” means:
- (i) An unauthorized acquisition, access, Disclosure, or Use of unencrypted TI in transit using the connectivity services or pursuant to any Framework Agreement, but not including the following:
    - (a) any unintentional acquisition, access, or Use of TI by a workforce member or person acting under the authority of a QHIN, Participant, or Subparticipant, if such acquisition, access, or Use was made in good faith and within the scope of authority and does not result in further Use or Disclosure in a manner not permitted under Applicable Law and this Common Agreement;

- (b) any inadvertent Disclosure by a person who is authorized to access TI at a QHIN, Participant, or Subparticipant to another person authorized to access TI at the same QHIN, Participant, Subparticipant, or Organized Health Care Arrangement in which a QHIN, Participant, or Subparticipant participates or serves as a Business Associate and the information received as a result of such Disclosure is not further Used or Disclosed in a manner not permitted under Applicable Law or this Agreement;
  - (c) A Disclosure of TI where a QHIN, Participant, or Subparticipant has a good faith belief that an unauthorized person to whom the Disclosure was made would not reasonably been able to retain such information;
  - (d) A Disclosure of TI that has been de-identified in accordance with the standard at 45 CFR § 164.514(a); or
  - (ii) Other security events (e.g., ransomware attacks), as set forth in an SOP, that prevent the affected QHIN, Participant, or Subparticipant from responding to requests for information as required under this Common Agreement or otherwise adversely affect their participation in QHIN-to-QHIN exchange.
- 1.53. “Upstream Subparticipant” means a Subparticipant that provides services to a Downstream Subparticipant pursuant to a Downstream Subparticipant Agreement to send and/or receive information as described in Section 10 of this Agreement.
- 1.54. “Use” (including correlative uses/tenses, such as Uses, Used, and Using) means, with respect to TI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
- 2. ***Authority of the Governing Council.*** Epic has established the Governing Council to supervise Epic QHIN activities. Epic will notify the Governing Council of material changes to the rights, responsibilities, and obligations of the Epic QHIN set forth in this Agreement and the Epic QHIN Operating Procedures. The Governing Council will work with Epic in accordance with the Epic QHIN Policy: Governance Operating Procedures to determine if and how those changes will be communicated to other Epic QHIN Participants and their Subparticipants. Participant acknowledges the authority of Epic, and, by extension, the Governing Council and hereby consents to the Governing Council’s authority to, in conjunction with Epic, provide governance, oversight, facilitation, and support for the Epic QHIN Participants by conducting activities including, but not limited to, the following:
  - 2.1. Creating and maintaining the Epic QHIN;
  - 2.2. Developing, approving, and amending the Epic QHIN Policies in accordance with the requirements of the applicable Framework Agreements, and Epic’s business needs;
  - 2.3. Developing, approving, and amending the necessary and appropriate processes to ensure the proper implementation of the Epic QHIN Policies in accordance with the requirements of applicable Framework Agreement, and Epic’s business needs;
  - 2.4. Participating in the processes developed to ensure the proper performance of governance functions in accordance with requirements of the Framework Agreements and Epic’s business needs; and
  - 2.5. Doing, or causing to be done, any actions which, in their discretion, the members of the Governing Council deem reasonable and necessary for the responsible governance of the Epic QHIN and the performance of governance functions as required by the Epic QHIN Policies, and any applicable Framework Agreements.
- 3. ***Dispute Resolution.***
  - 3.1. **Disputes Between Epic QHIN Participants.**
    - 3.1.1. This Section 3.1 applies only to Disputes between Epic QHIN Participants, or their Subparticipants, which arise in connection with the Epic QHIN. The following provisions do not apply to Disputes between an Epic QHIN Participant and the Participants of a QHIN

other than the Epic QHIN. Further, disputes between Epic QHIN Participants or their Subparticipants that arise in connection with exchange activities that do not utilize the Epic QHIN will be resolved using the appropriate Dispute Resolution Process for the exchange framework utilized.

- 3.1.2. Participant will, and will direct its Subparticipants to, use best efforts to resolve any issues that may arise between Participant or its Subparticipants and other Epic QHIN Participants through informal discussions. If, after good faith efforts, Participant and the other Epic QHIN Participant or Subparticipant are unable to successfully resolve the issues, then Participant will submit its grievance to the Governing Council in accordance with the requirements of the Epic QHIN Dispute Resolution Policy. As detailed in the Epic QHIN Dispute Resolution Policy, the Governing Council will consider the issue, render a decision, and impose sanctions as appropriate.
- 3.1.3. If Participant submits a Dispute to the Governing Council or is named in a Dispute submitted to the Governing Council, Participant will participate in the Dispute Resolution Process as established by the Epic QHIN Dispute Resolution Policy. Participant will accept the decision rendered by the Governing Council and will comply with any sanctions imposed by the Governing Council in connection with the decision. If Participant refuses to participate in the Dispute Resolution Process, to accept the Governing Council's decision, or to comply with sanctions imposed by the Governing Council in connection with the decision rendered, such refusal shall constitute a material breach of this Agreement and may be grounds for termination in accordance with Section 15.2.

### 3.2. **Disputes Between Epic QHIN Participants and Participants of other QHINs.**

- 3.2.1. If a Dispute arises in connection with the Common Agreement between Participant and a QHIN Participant of a QHIN other than the Epic QHIN, the Dispute shall be submitted to the RCE to be addressed by the RCE Dispute Resolution Process. Participant understands that the RCE Dispute Resolution Process does not supersede or replace any oversight, investigatory, enforcement, or other administrative actions or processes that may be taken by a relevant authority, whether arising out of or related to the circumstances giving rise to the Dispute.
- 3.2.2. Prior to utilizing the RCE Dispute Resolution Process, Participant shall use its best efforts to resolve Disputes that may arise with other QHINs, or their respective QHIN Participants, or the RCE through informal discussions. If the Dispute cannot be resolved in that manner, Epic may on its own behalf or on behalf of Participant, choose to submit the Dispute to the RCE Dispute Resolution Process. Likewise, Epic will, on its own behalf or on behalf of Participant, seek to resolve Disputes involving the RCE through good-faith informal discussions with the RCE prior to invoking the RCE Dispute Resolution Process.
- 3.2.3. Except in accordance with Section 3.3, if Participant refuses to participate in the RCE Dispute Resolution Process, such refusal shall constitute a material breach of this Agreement and may be grounds for termination of Participant's participation in QHIN-to-QHIN exchange in accordance with Section 15.2.

### 3.3. **Immediate Injunctive Relief**

- 3.3.1. Notwithstanding Sections 3.1 and 3.2, Participant may be relieved of its obligation to participate in either the Dispute Resolution Process or the RCE Dispute Resolution Process if Participant (i) makes a good faith determination that another Epic QHIN Participant's, Epic QHIN Subparticipant's, QHIN's or QHIN Participants' act or omission will cause irreparable harm to Participant or another organization or Individual (e.g. QHIN Participant, QHIN Subparticipant, Recipient or consumer) and (ii) pursues immediate injunctive relief against such Epic QHIN Participant, Epic QHIN Subparticipant, QHIN or QHIN Participant in a court of competent jurisdiction. Participant must inform Epic of such action within two (2) business days of filing for the injunctive relief and of the result of the action within twenty-four (24) hours of learning the same. If injunctive relief is sought against a QHIN, or its QHIN Participant(s), other than the Epic QHIN and/or its

Participants, Participant shall also inform the RCE of such action within two (2) business days of filing for the injunctive relief and within twenty-four (24) hours of learning the results of the action. Notwithstanding any provision of this Agreement to the contrary, if Participant is a U.S. federal agency, federal law shall govern whether and when equitable relief may be granted.

3.3.2. If the injunctive relief sought pursuant to Section 3.3.1 is not granted and Participant chooses to pursue the Dispute, the Dispute must be submitted to the Dispute Resolution Process in accordance with either Section 3.1 or 3.2 whichever is applicable.

3.4. **Activities during Dispute Resolution Process.** The pendency of a Dispute under this Agreement has no effect on either Party's obligations hereunder, unless Participant suspends or terminates its rights in accordance with Section 15.2 or 15.3 or is suspended in accordance with Section 15.3.

3.5. **Implementation of Agreed Resolution.** If at any point during the Dispute Resolution Process or the RCE Dispute Resolution Process, Participant and all other parties to the Dispute accept a proposed resolution of the Dispute, Participant and Epic each agree to implement the terms of the resolution in the agreed upon timeframe.

3.6. **Reservation of Rights.** If, following the Dispute Resolution Process or the RCE Dispute Resolution Process, in the opinion of Participant, the Dispute was not adequately resolved, Participant may pursue any additional remedies available to it.

4. **Cooperation and Non-Discrimination** (Required Flow-down)

4.1. **Cooperation.** (Required Flow-down) Participant understands and acknowledges that numerous activities with respect to this Agreement will likely involve other QHINs and their respective QHIN Participants and Subparticipants, as well as employees, agents, third-party contractors, vendors, or consultants of each of them. To the extent not in violation of Applicable Law, Participant shall, and shall require its Subparticipants to:

4.1.1. Respond in a timely manner, as may be further provided in an SOP, to inquiries from the RCE or other QHINs about possible issues related to their exchange of information under the Common Agreement;

4.1.2. Participate collaboratively in discussions coordinated by the RCE to address differing interpretations of requirements in the Common Agreement, the QTF, or any SOP prior to pursuing the RCE Dispute Resolution Process;

4.1.3. Make reasonable efforts to notify the RCE and other QHINs, as appropriate, when persistent and widespread connectivity failures are occurring with Participant or other QHIN Participants, so that all those affected can investigate the problems and identify the root cause(s) of the connectivity failures;

4.1.4. Work cooperatively, including, without limitation, facilitating contact between other QHINs or their QHIN Participants or their Subparticipants and Participant or its Subparticipants to address the root cause(s) of persistent and widespread connectivity failures;

4.1.5. Provide information (or require Participant's Subparticipants to provide information) to other QHINs in support of collaborative efforts to resolve issues or Disputes, provided that such information is subject to Participant's right to restrict or condition its cooperation or Disclosure of information in the interest of preserving privileges in any reasonably foreseeable litigation or protecting Confidential Information;

4.1.6. Provide information to aid the efforts of other QHINs or their respective QHIN Participants or Subparticipants to understand, contain, and mitigate a TEFCA Security Incident at the Request of such other QHINs or their respective QHIN Participants or Subparticipants, provided that such information is subject to Participant's right to restrict or condition its cooperation or Disclosure of information in the interest of preserving privileges in any reasonably foreseeable litigation or protecting Confidential Information; and



4.1.7. Subject to Participant's right to restrict or condition its cooperation or Disclosure of information in the interest of preserving privileges in any reasonably foreseeable litigation or protecting Confidential Information, Disclose to the RCE information that Participant, or its Subparticipants, may have that relates to the following:

4.1.7.1. cybersecurity risk information sharing programs; or

4.1.7.2. specific, identified security flaws in the operation of the QHIN that may require the QHIN to take specific steps to protect the security of their information technology systems and would not otherwise fall into subsection 4.1.7.1.

In no case shall Participant be required to Disclose TEFCA Information or other information in violation of Applicable Law. In seeking cooperation, Participant shall make all reasonable efforts to accommodate the other QHIN's schedules and reasonable operational concerns. The costs of cooperation to Participant shall be borne by Participant and shall not be charged to the RCE, Epic, the Epic Parent Entity, or other QHINs. Nothing in this Section shall modify or replace the TEFCA Security Incident notification obligations under Section 13.3 of this Agreement.

4.2. **Non-Discrimination** (Required Flow-down)

4.2.1. **Prohibition Against Exclusivity.** (Required Flow-down) Neither Participant, Participant's Subparticipants, Epic, nor the RCE shall prohibit or attempt to prohibit any QHIN, QHIN Participant, or Subparticipant from joining, exchanging with, conducting other transactions with, or supporting any other networks or exchange frameworks, using services *other than* the Connectivity Services, concurrently with the QHIN's, Participant's, or Participant's Subparticipants' participation in exchange activities conducted under the Framework Agreements.

4.2.2. **No Discriminatory Limits on the Exchange of TI.** (Required Flow-down) Participant shall not, and shall not allow its Subparticipants to, impede the exchange of information as permitted or required under the applicable Framework Agreements or limit interoperability with any other QHIN, QHIN Participant, Subparticipant, or Individual in a discriminatory manner. As used in this section, a "discriminatory manner" means action that is inconsistently taken or not taken with respect to any similarly situated QHIN, QHIN Participant, Subparticipant, Individual, or group of them, whether it is a competitor, or whether it is affiliated with or has a contractual relationship with any other entity, or in response to an event.

Notwithstanding the foregoing limitations, load balancing of network traffic, or other activities, protocols, or rules shall not be deemed discriminatory to the extent that they: (i) satisfy the requirements of the exception set forth in 45 CFR 171.205; and/or (ii) are based on a reasonable and good-faith belief that the other entity or group has not satisfied or will not be able to satisfy the applicable terms hereof (including compliance with Applicable Law) in any material respect.

5. **Contributions; IP Rights; Ownership of Materials; License.**

5.1. Participant acknowledges that Epic QHIN IP is protected under applicable United States law. Participant is encouraged to provide Contributions to the Epic QHIN and understands that Epic must obtain certain rights in such Contributions in order to include the Contribution in Epic QHIN IP.

5.2. With respect to each Contribution, Participant represents that: (a) no information in the Contribution is confidential; (b) Epic may freely Disclose the information in the Contribution; and (c) to the best of its knowledge, such Contribution is free of encumbrance as it relates to the intellectual property rights of others.

5.3. To the extent that a Contribution or any portion thereof is protected by copyright or other rights of authorship, Participant grants a perpetual, irrevocable, non-exclusive, royalty-free, world-wide, sublicensable right and license to Epic, the Epic Parent Entity and its affiliates under all such copyrights and other rights in the Contribution to copy, modify, publish, display and distribute the

Contribution (in whole or part) and to prepare derivative works based on or that incorporate all or part of such Contribution, in each case, for the purpose of incorporating such Contributions into the Epic QHIN IP even though it may include Contributions; and (b) permit others, at Epic's sole discretion, to reproduce in whole or in part the resulting Epic QHIN IP.

- 5.4. Participant shall identify to Epic, through the issuance of a letter of assurance, any patents or patent applications which Participant believes may be applicable to any Contribution made by Participant to the Epic QHIN. This assurance shall be provided without coercion and shall take the form of a general disclaimer to the effect that the patent holder will not enforce any of its present or future patent(s) that would be required to implement or use the Epic QHIN relevant to any person or entity using the patented item(s) to participate in the Epic QHIN.
- 5.5. The trademarks, service marks, trade dress, business names, company names, and logos owned by Epic or the Epic Parent Entity, are an important part of maintaining the strength and reputation of Epic and its efforts to enable the interoperable exchange of healthcare information. Participant may not use Epic QHIN IP or the intellectual property of the Epic Parent Entity to brand any of Participant's products or services and may not incorporate any Epic Marks in any of Participant's domain names except as provided in guidelines on the use of trademarks published by Epic or the Epic Parent Entity. Upon Participant being recognized by Epic as an Epic QHIN Participant, Participant shall be entitled to use and display "Epic QHIN Participant" within its printed marketing materials, including on Participant's website, to indicate that Participant has been accepted by Epic as an Epic QHIN Participant under this Agreement, provided that such use is not misleading or inaccurate. No other rights are granted under this Section. Participant shall not apply for registration for any trademark, service mark, trade dress, business name, company name, or logo that incorporates Epic QHIN IP or the intellectual property of the Epic Parent Entity, or any element confusingly similar to Epic QHIN IP or the intellectual property of the Epic Parent Entity. In connection with any non-trademark, descriptive use of Epic Marks, Participant, and its Subparticipants, will use the registration symbol ® or the trademark or service mark symbols, <sup>TM</sup> or <sup>SM</sup>, as more fully set out in guidelines on use of trademarks published by Epic or the Epic Parent Entity, and indicate in the text that the Epic Mark used "is the registered trademark of Epic," "is the trademark of Epic," or "is the service mark of Epic," respectively.
6. **Fees.** Epic will annually invoice Epic QHIN Participants for their participation in the Epic QHIN. Additional pricing information is available in the Epic QHIN Participation Fees Policy. Invoices shall be due and payable by Participant within thirty (30) days after receipt thereof unless Participant notifies Epic in writing that it is disputing the invoice and identifies the specific reasons it is disputing the invoice. Other than invoiced amounts that are disputed in good faith, any collection costs, attorney's fees or other expenses reasonably incurred by Epic in connection with amounts due under this Agreement are the responsibility of Participant, unless Participant is a U.S. federal agency, in which case, such costs, fees, or other expenses will be the responsibility of Participant only if awarded by a court of competent jurisdiction.
7. **Confidential Information.** (Required Flow-down) Participant, Epic, and the RCE agree, and Participant will require its Subparticipants to agree, to use all Confidential Information received pursuant to this Agreement or the Common Agreement only as authorized by this Agreement, the Common Agreement, or any applicable SOP(s) and solely for the performance of obligations under this Agreement or the proper exchange of information under this Agreement and for no other purpose. Each Party may act as a Discloser and a Recipient, accordingly. A Recipient will Disclose the Confidential Information it receives only to its employees, subcontractors, and agents who require such knowledge and use in the ordinary course and scope of their employment or retention and are obligated to protect the confidentiality of the Discloser's Confidential Information in a manner substantially equivalent to the terms required herein for the treatment of Confidential Information. Otherwise, a Recipient agrees not to Disclose the Confidential Information received to anyone except as permitted under this Agreement, the Common Agreement, or any applicable SOP(s).
8. **Utilization of the RCE Directory Service.** (Required Flow-down) The RCE Directory Service shall be used by Participant and its Subparticipants to create and maintain operational connectivity under the Agreement. The RCE and the Epic QHIN are providing Participant with access to, and the right to use, the RCE Directory Service on the express condition that Participant only use and Disclose the information contained in the RCE

Directory Service as necessary to advance the intended use of the RCE Directory Service or as required by Applicable Law. For example, Participant is permitted to Disclose information contained in the RCE Directory Service to the workforce members of its health information technology vendor who are engaged in assisting the Participant with establishing and maintaining connectivity via this Agreement and other Framework Agreements. Further, Participant shall not use the information contained in the RCE Directory Service for marketing or any form of promotion of its own products and services, unless such use or Disclosure is primarily part of an effort by Participant to expand, or otherwise improve, connectivity via this Agreement, and any promotion of Participant's own products or services is only incidental to that primary purpose. In no event shall Participant use or Disclose the information contained in the RCE Directory Service in a manner that could be reasonably expected to have a detrimental effect on ONC, the RCE, other QHINs and/or their QHIN Participants or Subparticipants, or any other Individual or organization. For the avoidance of doubt, information contained in the RCE Directory is Confidential Information except to the extent such information meets one of the exceptions in the definition of Confidential Information.

9. **Formatting Requirements.** Prior to participating in the QHIN, Participant will work with Epic to ensure that its system is configured to make all data elements required by the Common Agreement, the QTF, or an applicable SOP available for exchange with other QHIN Participants via the Epic QHIN. Additionally, if the data elements required by the Common Agreement, the QTF, or an applicable SOP are amended, Participant will work with Epic to ensure Participant's system is configured to make any additional data elements available for exchange via the Epic QHIN prior to the Effective Date of the amendment.

10. **Acceptable Use**

10.1. **Use and Disclosure of TI.** In addition to the requirements below, Participant and its Subparticipants may only Request information for a specific Exchange Purpose if the Participant or Subparticipant is the type of person or entity that is described in the definition of the applicable Exchange Purpose. Such a Participant or Subparticipant may use a Business Associate, agent, or contractor to make such a Request, Use, or Disclosure for the applicable Exchange Purpose. For example, only a Health Care Provider may Request information for the Exchange Purpose of treatment. The Common Agreement specifies, among other things, the reasons for which information may be Requested and transmitted from one QHIN to another QHIN. Participant and its Subparticipants should understand that, despite their participation under a Framework Agreement, the Epic QHIN is prohibited from engaging in QHIN-to-QHIN exchange for any purpose other than an Exchange Purpose permitted under the Common Agreement. Participant and its Subparticipants may participate in other networks, as well as non-network information exchange. This Agreement and the Common Agreement do not affect these other activities or the reasons for which Participant and its Subparticipants may Request and exchange information within their networks and/or subject to other agreements. Such activities are not in any way limited by this Agreement or the Common Agreement.

10.1.1. **Uses.** (Required Flow-down) Participant may use TI, and may allow its Subparticipants to use TI, in any manner that: (i) is not prohibited by Applicable Law; (ii) is consistent with Participant's, or its Subparticipant's, Privacy and Security Notice, if applicable; and (iii) is in accordance with Sections 12 and 13 of this Agreement as applicable.

10.1.2. **Disclosures.** (Required Flow-down) Participant and its Subparticipants may Disclose TI provided Disclosure: (i) is not prohibited by Applicable Law; (ii) is consistent with Participant's Privacy and Security Notice, if applicable; and (iii) is in accordance with Sections 12 and 13 of this Agreement as applicable.

10.1.3. **Responses.** (Required Flow-down) Participant, and its Subparticipants, must support all Exchange Purposes and must Respond to all Exchange Purposes that are identified as "required" in the Exchange Purposes SOP. Participant must provide all Required Information that is relevant for a required Exchange Purpose, as may be further specified in an implementation SOP for the applicable Exchange Purpose, in Response to a Request transmitted via QHIN-to-QHIN exchange, unless providing the Required Information is prohibited by Applicable Law, this Agreement, or the Common Agreement, or if not providing the Required Information is consistent with all Applicable Law, this Agreement, and the Common Agreement.

- 10.1.4. **Exceptions to Required Responses.** Notwithstanding the foregoing, Participant is **permitted but not required** to Respond to a Request transmitted via QHIN-to-QHIN exchange in the circumstances set forth below, provided the Response: (a) is not prohibited by Applicable Law; (b) is consistent with Participant’s Privacy and Security Notice, if applicable, and (c) is in accordance with this Agreement and the Common Agreement.
- 10.1.4.1. If Participant is a Public Health Authority;
- 10.1.4.2. If Participant utilizes the Government Benefits Determination Exchange Purpose, including such agency’s agent(s)/contractor(s):
- 10.1.4.3. If the Requested information is not Required Information, provided such Response would not otherwise violate the terms of this Agreement or the Common Agreement;
- 10.1.4.4. If Participant is a federal agency, to the extent that the Requested Disclosure of Required Information is not permitted under Applicable Law (e.g., it is Controlled Unclassified Information as defined at 32 CFR Part 2002, and the party Requesting it does not comply with the applicable policies and controls that the federal agency adopted to satisfy its requirements); or
- 10.1.4.5. If the Exchange Purpose is authorized but not required at the time of the Request, either under this Agreement, the Common Agreement, or the Exchange Purposes SOP.
- 10.1.5. **Special Legal Requirements.** (Required Flow-down) If, and to the extent Applicable Law requires that, an Individual either consents to, approves, or provides an authorization for the use or Disclosure of that Individual’s information to Participant, such as a more stringent state law relating to sensitive health information, then Participant shall refrain from the use or Disclosure of such information in connection with this Agreement unless such Individual’s consent, approval, or authorization has been obtained consistent with the requirements of Applicable Law and Section 12 of this Agreement, including without limitation communicated pursuant to the process described in the QTF. Copies of such consent, approval, or authorization shall be maintained and transmitted pursuant to the process described in the QTF by whichever Party is required to obtain it under Applicable Law, and Participant may make such copies of the consent, approval, or authorization available electronically to any QHIN, QHIN Participant, or Subparticipant in accordance with the QTF and to the extent permitted by Applicable Law. Participant shall maintain written policies and procedures that allow an Individual to revoke such consent, approval, or authorization on a prospective basis.
- 10.1.6. **Compliance with Standard Operating Procedures.** The RCE has adopted SOPs to provide guidance on specific aspects of the exchange activities under the Common Agreement that are binding on the RCE, Epic, and, as applicable, Participant and its Subparticipants. Participant and its Subparticipants shall comply with all SOPs that are applicable to each of them. If Participant or its Subparticipants fail to comply with any applicable SOP, the RCE, Epic, or the Governing Council may take corrective action as applicable. Said corrective action will include requiring steps to bring Participant and/or its Subparticipant into compliance with the SOP and may include the suspension of Participant’s and/or its Subparticipants’ ability to exchange information through the Epic QHIN until the non-compliance is corrected, or the termination of Participant’s and/or its Subparticipants’ right to exchange information under the Framework Agreements.
- 10.1.7. **Business Associate Exhibit.** To address the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and associated regulations, the parties agree to the terms of the Business Associate Exhibit.

## 11. ***Accountability.***

- 11.1. To the extent not prohibited by Applicable Law, Participant shall be responsible for its acts and omissions, and the acts and omissions of its Subparticipants, but not for the acts or omissions of any

other QHIN Participant or their Subparticipants. For the avoidance of doubt, a Participant that is also a governmental agency or instrumentality shall not be liable to the extent that the Applicable Law that governs Participant does not expressly waive Participant's sovereign immunity. Notwithstanding any provisions in this Agreement or the Common Agreement to the contrary, Participant and its Subparticipants shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This section shall not be construed as a hold harmless or indemnification provision.

- 11.2. **Harm to the RCE.** Participant shall be responsible for harm suffered by the RCE to the extent that the harm was caused by Participant's or its Subparticipant's breach of this Agreement, the Common Agreement, and/or any applicable SOP.
  - 11.3. **Harm to the Epic QHIN.** Participant shall be responsible for harm suffered by the Epic QHIN to the extent the harm was caused by Participant's or its Subparticipant's breach of the Common Agreement, this Agreement, and/or any applicable SOP.
  - 11.4. **Harm to other QHINS.** Participant shall be responsible for harm suffered by another QHIN to the extent that the harm was caused by Participant's or its Subparticipants' breach of the Common Agreement, this Agreement, any applicable SOP, and/or an Epic QHIN Guidance Document.
  - 11.5. **Epic QHIN Accountability.** Participant will not hold the Epic Parent Entity, Epic, or anyone acting on Epic's behalf, liable for any damages, losses, liabilities or injuries arising from or related to this Agreement or the Common Agreement, except to the extent that such damages, losses, liabilities, or injuries are the direct result of Epic's breach of this Agreement. This section shall not be construed as a hold harmless or indemnification provision.
  - 11.6. **Limitation of Liability.** Notwithstanding anything in this Agreement to the contrary, in no event shall Epic's or the Epic Parent Entity's total liability to Participant and all third party beneficiaries arising from or relating to this Agreement or the Common Agreement exceed amounts equal to two million dollars (\$2,000,000) per incident and five million dollars (\$5,000,000) aggregate per annum or such other amounts as stated in a then-in-effect SOP promulgated by the RCE in order to allow for the periodic adjustment of this liability limit over time without the need to amend the Common Agreement. This and any such adjusted limitation on liability shall apply regardless of whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if such party has been apprised of the possibility or likelihood of such damages occurring. If Participant is a government agency or a government instrumentality under federal law, state law, local law, or tribal law and is prohibited from limiting its recovery of damages from a third party under Applicable Law, then this section shall not apply to Participant or Epic. Nothing in this Section shall be construed to create liability for a governmental agency or instrumentality or otherwise waive sovereign immunity.
12. **Privacy** (Required Flow-down)
- 12.1. **Compliance with the HIPAA Privacy Rule.** (Required Flow-down) If Participant is a Non-HIPAA Entity (but not to the extent that it is acting as an entity entitled to make a Government Benefits Determination under Applicable Law, a Public Health Authority, or a Government Health Care Entity), then it shall, and shall ensure its Subparticipants, comply with the provisions of the HIPAA Privacy Rule listed below with respect to all Individually Identifiable Information that Participant reasonably believes is TI as if such information is PHI and Participant is a Covered Entity. Such compliance shall be consistent with Section 16.17 and enforced as part of its obligation pursuant to this Agreement.
    - 12.1.1. **From 45 CFR § 164.502, General Rules** (Required Flow-down):
      - 12.1.1.1. Subsection (a)(1) – Dealing with permitted uses and Disclosures, but only to the extent Participant is authorized to engage in the activities described in this subsection of the HIPAA Privacy Rule for the applicable Exchange Purpose.
      - 12.1.1.2. Subsection (a)(2)(i) – Requiring Disclosures to Individuals
      - 12.1.1.3. Subsection (a)(3) – Business Associates

- 12.1.1.4. Subsection (a)(5) – Dealing with prohibited uses and Disclosures
- 12.1.1.5. Subsection (b) – Dealing with the Minimum Necessary standard
- 12.1.1.6. Subsection (c) – Dealing with agreed-upon restrictions
- 12.1.1.7. Subsection (d) – Dealing with deidentification and re-identification of information
- 12.1.1.8. Subsection (e) – Dealing with Business Associate contracts
- 12.1.1.9. Subsection (f) – Dealing with deceased persons’ information
- 12.1.1.10. Subsection (g) – Dealing with personal representatives
- 12.1.1.11. Subsection (h) – Dealing with confidential communications
- 12.1.1.12. Subsection (i) – Dealing with uses and Disclosures consistent with Notice
- 12.1.1.13. Subsection (j) – Dealing with Disclosures by whistleblowers
- 12.1.2. **45 CFR § 164.504, Organizational Requirements**
- 12.1.3. **45 CFR § 164.508, Authorization Required.**
- 12.1.4. **45 CFR § 164.510, Uses and Disclosures Requiring Opportunity to Agree or Object.**
- 12.1.5. **45 CFR § 164.512, Authorization or Opportunity to Object Not Required**
- 12.1.6. **From 45 CFR § 164.514, Other Requirements Relating to Uses and Disclosures:**
  - 12.1.6.1. Subsections (a)-(c) – Dealing with de-identification requirements that render information not Individually Identifiable for purposes of this Section 11 and TEFCA Security Incidents
  - 12.1.6.2. Subsection (d) – Dealing with Minimum Necessary requirements
  - 12.1.6.3. Subsection (e) – Dealing with Limited Data Sets
- 12.1.7. **45 CFR § 164.522, Rights to Request Privacy Protections**
- 12.1.8. **45 CFR § 164.524, Access of Individuals**
- 12.1.9. **45 CFR § 164.528, Accounting of Disclosures**
- 12.1.10. **From 45 CFR § 164.530, Administrative Requirements:**
  - 12.1.10.1. Subsection (a) – Dealing with personnel designations
  - 12.1.10.2. Subsection (b) – Dealing with training
  - 12.1.10.3. Subsection (c) – Dealing with safeguards
  - 12.1.10.4. Subsection (d) – Dealing with complaints
  - 12.1.10.5. Subsection (e) – Dealing with sanctions
  - 12.1.10.6. Subsection (f) – Dealing with mitigation
  - 12.1.10.7. Subsection (g) – Dealing with refraining from intimidating or retaliatory acts
  - 12.1.10.8. Subsection (h) – Dealing with waiver of rights
  - 12.1.10.9. Subsection (i) – Dealing with policies and procedures
  - 12.1.10.10. Subsection (j) – Dealing with documentation
- 12.2. **Written Privacy Policy.** (Required Flow-down) Participant must, and must require its Subparticipants to, develop, implement, make publicly available, and act in accordance with a written privacy policy describing its privacy practices with respect to Individually Identifiable Information that is used or Disclosed pursuant to this Agreement. Participant can satisfy the written

privacy policy requirement by including applicable content consistent with the HIPAA Rules into its existing privacy policy. This written privacy policy requirement does not supplant the HIPAA Privacy Rule obligations of a QHIN, QHIN Participant, or a Subparticipant that is a Covered Entity to post and distribute a Notice of Privacy Practices. If Participant is a Covered Entity, then this written privacy practices requirement can be satisfied by its Notice of Privacy Practices.

13. **Security** (Required Flow-down)

- 13.1. **Security Controls for TI.** (Required Flow-down) Participant shall implement and maintain, and require its Subparticipants to implement and maintain, security controls for TI that are commensurate with risks to the confidentiality, integrity, and/or availability of the TI. If Participant, or any of its Subparticipants, are a Non-HIPAA Entity, they shall be required to comply with the HIPAA Security Rule provisions with respect to all Individually Identifiable Information that the Participant or Subparticipant reasonably believes is TI as if such information were PHI and the Participant or Subparticipant were a Covered Entity or Business Associate. Participant must further implement and maintain, and require its Subparticipants to implement and maintain, any additional security requirements that may be set forth in an SOP applicable to Participant and/or its Subparticipants. Such compliance shall be enforced as part of Participant's and its Subparticipant's obligations pursuant to the Framework Agreements.
- 13.2. **TI Outside the United States.** (Required Flow-down) Participant shall not, and shall prohibit its Subparticipants from, using TI outside the United States or Disclosing TI to any person or entity outside the United States except to the extent that such use or Disclosure is permitted or required by Applicable Law and the use or Disclosure is conducted in conformance with the HIPAA Security Rule, regardless of whether Participant or its Subparticipant is a Covered Entity or Business Associate. Participant shall, and shall require its Subparticipants to, evaluate the risks of any extraterritorial uses and/or Disclosures of TI, if applicable, as part of an annual security assessment and prior to any new or substantially different type of non-U.S. use(s) or Disclosure(s). Such security assessment shall include a risk assessment to evaluate whether the uses or Disclosures of Individually Identifiable Information that is reasonably believed to be TI by or to persons or entities outside the United States satisfies the requirements of the HIPAA Security Rule. The foregoing does not modify or eliminate any provision of Applicable Law that does not permit Participant, or its Subparticipants, to Disclose Individually Identifiable Information to a person or entity outside the United States or that imposes conditions or limitations on such Disclosure.
- 13.3. **Reporting of TEFCA Security Incident(s).** (Required Flow-down) Participant shall notify Epic of any TEFCA Security Incident Participant experiences as soon as reasonably practicable, but not more than three (3) calendar days after determining that a TEFCA Security Incident has occurred. Such notification must include sufficient information for Epic, the RCE and others affected to understand the nature and likely scope of the TEFCA Security Incident. Participant shall supplement the information contained within the notification as additional information becomes available and will cooperate with Epic, the Governing Council, the RCE, other QHINs, QHIN Participants, and/or Subparticipants that are likely to be impacted by the TEFCA Security Incident.
  - 13.3.1. Participant will be designated a point of contact for delivering notification of a TEFCA Security Incident as described in the applicable Epic QHIN Policy.
  - 13.3.2. Participant will: (i) notify Epic and Participant's Subparticipants of any TEFCA Security Incident Participant experiences in accordance with the timing and content requirements stated in Section 13.3; (ii) Require that Participant's Subparticipants report any TEFCA Security Incident experienced by or reported to the Subparticipant to the Participant and to the Subparticipant's Downstream Subparticipants in accordance with the timing and content requirements stated in this Section 13.3; (iii) Require that each of Participant's Subparticipants require Downstream Subparticipants to report any TEFCA Security Incident experienced by or reported to the Downstream Subparticipant to the Upstream Subparticipant and to its own Downstream Subparticipants, in accordance with the timing and content requirements stated in this Section 13.3; and (iv) notify Epic of any TEFCA Security Incident reported to the Participant by one of its Subparticipants. Nothing in this Section 13.3.2 shall be deemed to modify or replace any breach notification requirements

that Participant or its Subparticipants may have under the HIPAA Rules, the FTC Rule, and/or other Applicable Law. To the extent that Participant, or its Subparticipants, is already required by Applicable Law to notify Epic, another QHIN Participant, a Subparticipant, and/or another QHIN of an incident that would also be a TEFCA Security Incident, this Section does not require a duplicative notification.

- 13.3.3. **Security Resource Support for Participant.** Epic will make available to Participant: (i) security resources and guidance regarding the protection of TI applicable to Participant's participation in the Epic QHIN under the applicable Framework Agreement; and (ii) information and resources that the RCE makes available to Epic related to the promotion and enhancement of the security of TI under the Framework Agreements.

- 14. **Monitoring.** In order to confirm compliance with this Agreement, Epic, through its agents, employees, and independent contractors, shall have the right, but not the obligation, to monitor exchange activities enabled by the Epic QHIN. Participant agrees to cooperate with Epic in these monitoring activities and to provide, at Epic's reasonable request, information in the furtherance of Epic's monitoring including, but not limited to, audit logs of exchange transactions and summary reports of exchange activities, to the extent that Participant or its Subparticipants possess such information. Nothing in this Section shall be construed as limiting or modifying Participant's responsibilities for performance measure reporting or demonstrating compliance for a specific Epic QHIN Use Case, as outlined in an applicable Epic QHIN Policy. Nothing in this Agreement shall be construed to allow Epic to have direct access to the information systems of any Epic QHIN Participant or its Subparticipants.

15. **Term and Termination**

- 15.1. **Term.** This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with this Section.

- 15.2. **Termination.** Participant may terminate this Agreement at any time by providing sixty (60) days prior written notice to Epic. Epic may terminate this Agreement with immediate effect by giving notice to Participant: (i) if Participant is in material breach of any of the terms and conditions of this Agreement and fails to remedy such breach within thirty (30) days after receiving notice of such breach; (ii) if Participant breaches a material provision of this Agreement where Epic determines that such breach is not capable of remedy; or (iii) for any reason and at any time by providing ninety (90) days prior written notice to Participant. If Participant is a U.S. federal agency, then the Contract Disputes Act, 41 U.S.C. Sections 7101 et seq., shall govern alleged breaches under this Agreement.

- 15.3. **Rights to Suspend.** (Required Flow-down)

- 15.3.1. **Suspension Rights Granted to RCE.** The RCE may suspend either Party's right to engage in any QHIN-to-QHIN exchange activities if: (i) there is an alleged violation of the Common Agreement or of Applicable Law by the Party/Parties; (ii) there is a cognizable threat to the security of information that the RCE reasonably believes is TI transmitted pursuant to this Agreement or the Common Agreement, or to the infrastructure of the Epic QHIN; or (iii) such suspension is in the interests of national security as directed by an agency of the United States government.

- 15.3.2. **Suspension Rights Granted to Epic.** Epic shall have the same authority as the RCE to suspend a party's right to engage in any activities under the Agreement if any of the circumstances described in subsections 15.3.1 (i)-(iii) above occur with respect to Participant and/or Participant's Subparticipants.

- 15.3.2.1. Epic *may* exercise such right to suspend based on its own determination that any of the circumstances described in subsections 15.3.1 (i)-(iii) above occurred with respect to Participant and/or Participant's Subparticipants.

- 15.3.2.2. Epic *must* exercise such right to suspend if directed to do so by the RCE based on the RCE's determination that suspension is warranted based on any of the circumstances described in subsection 15.3.1 (i)-(iii) above with respect to Participant and/or Participant's Subparticipants. If the suspension of Participant and/or Participant's Subparticipants is at the direction of the RCE,



Epic will effectuate such suspension as soon as practicable and, in no case, longer than within twenty-four (24) hours of the RCE having directed the suspension, unless the RCE specifies a longer period is permitted to effectuate the suspension.

16. **Miscellaneous**

- 16.1. **Authority to Execute.** Participant warrants and represents that it has the full power and authority to execute this Agreement and that any representatives of Participant who execute this Agreement have full power and authority to do so on behalf of Participant.
- 16.2. **Amendment.** This Agreement, and any attachments or exhibits incorporated by reference in this Agreement, may be amended by Epic from time to time. Epic will provide notice of any amendment to Participant and all other Epic QHIN Participants at least ninety (90) calendar days prior to the Effective Date of the amendment. Participant's continued participation in the Epic QHIN following the Effective Date of the amendment shall be deemed consent to terms of the amendment. The complete text of the Agreement as amended is available on [Galaxy](#). Notwithstanding the foregoing, if Epic determines, based on advice from legal counsel, that an amendment is required for Epic to remain compliant with Applicable Law or the Common Agreement, or if an amendment is mandated by the RCE, Epic is not required to provide advance notice regarding the amendment. However, when commercially reasonable, Epic shall provide sixty (60) days advance notice of the amendment.
- 16.3. **Compliance with Applicable Law and the Framework Agreements.** (Required Flow-down) Notwithstanding anything herein to the contrary, Participant shall not be required to do or undertake any action or omission that would cause Participant to violate Applicable Law. Participant shall, and shall require its Subparticipants to, comply with all Applicable Law and to implement and act in accordance with any provision required by this Agreement, the Common Agreement, all applicable SOPs, and the provisions of the QTF.
- 16.4. **Epic QHIN Policies.**
- 16.4.1. **Participation Requirements:** Participant will satisfy the requirements listed in the then-current Epic QHIN Onboarding Policy, including licensing and implementing certain products from the Epic Parent Entity and enabling functionality so Participant can respond to queries for patient information from other QHIN Participants, before they begin their participation in the Epic QHIN.
- 16.4.2. **Other Policy Documents.** Participant agrees to abide by, and, as applicable, ensure their Sub-Participants abide by, the then-current Epic QHIN Policies. Failure to comply with the requirements of an applicable Epic QHIN Policy may result in Epic or the Governing Council taking action consistent with the applicable policies and procedures.
- 16.5. **Required Flow-Downs.** Participant acknowledges that, under the Common Agreement, Epic has an obligation to incorporate certain Flow-Downs from the Common Agreement into this Agreement. Participant agrees that it will incorporate the Flow-Downs within its Subparticipant Agreements. Further, Participant agrees that its Subparticipant Agreements will obligate Subparticipants to require Downstream Subparticipants, if any, to incorporate the Flow-Downs, and an obligation to include the Flow-Downs, in any further Downstream Subparticipant Agreements. The required Flow-Downs are found in Section 4; Section 7; Section 8; subsection 10.1.1; subsection 10.1.2; subsection 10.1.3; subsection 10.1.5; Section 12; subsection 13.1; subsection 13.2; subsection 13.3; subsection 15.3; subsection 16.3; subsection 16.16; and subsection 16.18.
- 16.6. **Governing Law, Forum, and Jurisdiction.** This Agreement will be governed and interpreted under Wisconsin law, without reference to its conflicts of laws principles, and any action (including by arbitration, if applicable) arising out of or relating to this Agreement will be brought exclusively in Dane County, Wisconsin. Participant consents to the personal jurisdiction and venue of the state and federal courts (and arbitration, if applicable) located in Dane County, Wisconsin.
- 16.7. **Assignment.** None of this Agreement, including but not limited to any of the rights created by this Agreement, is assignable by Participant, whether by operation of law or otherwise without the prior written approval of Epic.

- 16.8. **Captions.** Captions appearing in this Agreement are for convenience only and shall not be deemed to explain, limit, or amplify the provisions of this Agreement.
- 16.9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding agreement when each Party has executed one counterpart. Counterparts may be delivered via electronic mail (including PDF or electronic signature (e.g., [www.docusign.com](http://www.docusign.com)), and any counterpart so delivered will be deemed to have been duly and validly delivered and valid and effective for all purposes.
- 16.10. **Severability.** The provisions of this 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, if possible, and the remaining provisions of this Agreement shall remain in full force and effect and enforceable. If such provision cannot be modified to achieve the purpose originally intended, it shall be severed from the Agreement and the remaining provisions of this Agreement will remain in full force and effect and enforceable.
- 16.11. **Entire Agreement; Waiver.** This Agreement, together with all attachments, exhibits and artifacts incorporated by reference, contains the entire understanding of the Parties with regard to the subject matter contained herein. Nothing in this Agreement will operate to modify the terms of any agreement between Participant and the Epic Parent Entity except as specifically identified. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor will it in any way effect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach, nor shall any delay by either Party to exercise any right under this Agreement operate as a waiver of any such right.
- 16.12. **Force Majeure.** Neither Party shall be responsible for any delays or failures in performance caused by the occurrence of events or other circumstances that are beyond its reasonable control after the exercise of commercially reasonable efforts to prevent or mitigate the effect of any such occurrence or event.
- 16.13. **Independent Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between Participant and Epic. Except as specifically set forth herein, neither Party shall have the power to control the activities and operations of, or contractually bind or commit, the other Party. With respect to one another, the status of the Parties is that of independent contractors.
- 16.14. **Notices.** All notices to be made under this Agreement shall be given in writing to Participant and Epic at the address set forth following each Party's signature, and shall be deemed given: (i) upon delivery, if personally delivered; or (ii) upon the date indicated on the return receipt, when sent by the United States Postal Service Certified Mail, return receipt requested; and (iii) if by facsimile telecommunication, upon receipt when the notice is directed to a facsimile telecommunication number listed by the Party and the sending facsimile machine receives confirmation of receipt by the receiving facsimile machine.
- 16.15. **Priority.** In the event of any conflict or inconsistency between a provision in the body of this Agreement and any exhibit or attachment hereto, or any Epic QHIN Policy the terms contained in the body of this Agreement shall prevail.
- 16.16. **Participant's Responsibility for Subparticipants.** Participant shall take reasonable steps to confirm that all of its Subparticipants are abiding by the requirements of the Framework Agreements. If Participant becomes aware of a material non-compliance by one or more of its Subparticipants, then Participant shall promptly notify Epic and its non-compliant Subparticipant in writing. Such notice shall inform the non-compliant Subparticipant that its failure to correct any such deficiencies within the timeframe established by Epic shall constitute a material breach of the Agreement, which may result in early termination of the Agreement.
- 16.17. **Remedies Cumulative.** The rights and remedies of the Parties provided in this Agreement are cumulative and are in addition to any other rights and remedies provided by law.

- 16.18. **Survival.** (Required Flow-down) The following provisions will survive for the specified period following the expiration or termination of this Agreement.
- 16.18.1. Section 3, Dispute Resolution, shall survive the expiration or termination of this Agreement indefinitely.
  - 16.18.2. Section 5, Contributions; IP Rights; Ownership of Materials; License, shall survive the expiration or termination of this Agreement indefinitely.
  - 16.18.3. Section 7, Confidential Information, shall survive for a period of six (6) years following the expiration or termination of this Agreement.
  - 16.18.4. Section 11, Accountability, shall survive the expiration or termination of this Agreement indefinitely.
  - 16.18.5. Section 12, Privacy, to the extent that the Participant, or its Subparticipants, are subject to Section 12, said Section shall survive the expiration or termination of this Agreement until the expiration of the time period specified in the definition of PHI at 45 CFR § 160.103 under Subsection 2(iv) of such definition, i.e., fifty (50) years after the death of the Individual to whom the information covered by Section 14 relates.
  - 16.18.6. Section 13.1, Security Controls for TI, to the extent that Participant, or its Subparticipants, are subject to Section 13.1, said Section shall survive the expiration or termination of this Agreement until the expiration of the time period specified in the definition of PHI at 45 CFR § 160.103 under Subsection 2(iv) of such definition, i.e., fifty (50) years after the death of the Individual to whom the information covered by Section 15.1 relates.
  - 16.18.7. The requirements of Section 13.3, Reporting of TEFCA Security Incident(s), shall survive for a period of six (6) years following the expiration or termination of this Agreement or the Common Agreement.
  - 16.18.8. Section 16, Miscellaneous, will survive the expiration or termination of this Agreement indefinitely.

**[CUSTOMER]**

**EPIC NEXUS, INC.**

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**Notice Address:**

**Notice Address:**  
 Epic Nexus, Inc.  
 Attn: President  
 1979 Milky Way  
 Verona, WI 53593