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Contract Number
25-21

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	<u>Andrew Goldfrach</u>
Telephone Number	<u>(909) 580-6150</u>
Contractor	<u>Epic Nexus, Inc.</u>
Contractor Representative	<u>David Pope</u>
Telephone Number	<u></u>
Contract Term	<u>Date of full execution until terminated by either party</u>
Original Contract Amount	<u>\$39,000 Annually</u>
Amendment Amount	<u></u>
Total Contract Amount	<u>\$39,000 Annually</u>
Cost Center	<u></u>
Grant Number (if applicable)	<u>N/A</u>

Briefly describe the general nature of the contract: Agreement with Epic Nexus, Inc., including non-standard terms, for the participation in the Qualified Health Information Network, to exchange health information via the Trusted Exchange Framework and Common Agreement, a health information network sponsored by the Office of the National Coordinator for Health Information Technology, for a not to exceed amount of \$39,000 annually effective the date of full execution until terminated by either party.

FOR COUNTY USE ONLY

Approved as to Legal Form

Bonnie Uphold
Bonnie Uphold, Supervising Deputy County Counsel

Date 1/3/2025

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

Andrew Goldfrach
Andrew Goldfrach, AR/MC Chief Executive Officer

Date 1/6/2025



INTRODUCTION

The Epic community has long been a leader in expanding 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 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 Nexus has established a Qualified Health Information Network ("QHIN") which enables organizations to participate in exchange via TEFCA. All Participants in TEFCA enter a QHIN-Participant agreement that consists of terms specific to participation in each QHIN accompanied by the TEFCA Participant/Subparticipant Terms of Participation, which are a standard set of terms and expectations that govern exchange in the TEFCA Ecosystem. The TEFCA Participant/Subparticipant Terms of Participation 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 Epic Nexus QHIN specific terms are found in the Epic Nexus QHIN Agreement below followed by the current standard TEFCA Participant/Subparticipant Terms of Participation. The current Epic Nexus QHIN Agreement and Epic Nexus QHIN Policies are also available on [Galaxy](#) for easy reference in the future.

Epic Nexus QHIN Agreement

This Epic Nexus QHIN Agreement (the "Agreement") is made by and between San Bernardino County, a political subdivision of the State of California (the "Participant") and Epic Nexus, Inc. ("Epic Nexus") effective as of the date Participant executes this Agreement. Participant and Epic Nexus may be referred to in the Agreement as a "Party" or referred to collectively as "Parties"

WHEREAS, Epic Nexus has created a health information network that has achieved a Qualified Health Information Network designation (the "Epic Nexus QHIN");

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

WHEREAS, Participant, by signing this Agreement, agrees to be bound by its terms, the terms of the TEFCA Participant/Subparticipant Terms of Participation, and become an Epic Nexus 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:** Capitalized terms will have the meaning set forth in the TEFCA Participant/Subparticipant Terms of Participation or as set forth below:
 - 1.1. "Contribution" means any submission by a Discloser to Epic Nexus or its affiliated entities, including Epic Parent, intended by the Discloser to be considered for inclusion in, or to support, the Epic Nexus QHIN, including comments submitted on any media, oral discussions at meeting of any work group, committee or sub-committee or other types of submissions.
 - 1.2. "Dispute" means (i) a disagreement about any provision of this Agreement, the Common Agreement, an SOP, an Epic Nexus 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.
 - 1.3. "Epic Nexus QHIN Dispute Resolution Process" means the formal process, established by the Epic Nexus QHIN Policy: Dispute Resolution and Participant Enforcement, by which Disputes between Epic Nexus QHIN Participants or their Subparticipants relating to exchange activities or the exchange framework may be resolved.
 - 1.4. "Epic Nexus QHIN IP" means any copyrights, patent rights, trade secrets, trademarks, service marks, trade dress, and other intellectual property in or related to Epic Nexus or the Epic Nexus QHIN including, but not limited to, this Agreement and all Exhibits, Implementation Guides, Epic Nexus QHIN Policy Documents, related materials, information, reports, and processes.
 - 1.5. "Epic Nexus 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 Nexus QHIN

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

- 1.6. "Epic Nexus QHIN Policy" means the policies and procedures adopted by Epic Nexus to govern the exchange of TEFCA Information via the Epic Nexus QHIN in accordance with the principles and requirements of the Common Agreement.
 - 1.7. "Epic Nexus 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.
 - 1.8. "Epic Parent" means Epic Systems Corporation, located at 1979 Milky Way, Verona, Wisconsin 53593.
 - 1.9. "Governing Council" means the group that supervises the activities and operation of the Epic Nexus QHIN as detailed in the Epic Nexus QHIN Policy: Governance Operating Procedures.
 - 1.10. "Implementation Guide" means a guide adopted by Epic Nexus that sets forth the technical specifications and additional business rules that apply to Epic Nexus QHIN Participants who intend to send and/or receive information for one or more Exchange Purposes.
 - 1.11. "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.
 - 1.12. "TEFCA Participant/Subparticipant Terms of Participation" means the most recent version of the Participant/Subparticipant Terms of Participation published by the RCE, a current copy of which is included in this Agreement in the Participant/Subparticipant Terms of Participation Exhibit.
2. **Authority of the Governing Council.** Epic Nexus has established the Governing Council to serve as a Designated Network Governance Body to perform Governance Services for the Epic Nexus QHIN. Epic Nexus will notify the Governing Council of material changes to the rights, responsibilities, and obligations of the Epic Nexus QHIN set forth in this Agreement and the Epic QHIN Policy: Operating Procedures. The Governing Council will work with Epic Nexus in accordance with the Epic Nexus QHIN Policy: Governance Operating Procedures to determine if and how those changes will be communicated to other Epic Nexus QHIN Participants and their Subparticipants. Participant acknowledges the authority of Epic Nexus, and, by extension, the Governing Council and hereby consents to the Governing Council's authority to, in conjunction with Epic Nexus, provide governance, oversight, facilitation, and support for the Epic Nexus QHIN Participants by conducting activities including, but not limited to, the following:
- 2.1. Creating and maintaining the Epic Nexus QHIN;
 - 2.2. Developing, approving, and amending the Epic Nexus QHIN Policies in accordance with the requirements of the applicable Framework Agreements, and the business needs of Epic Nexus;
 - 2.3. Developing, approving, and amending the necessary and appropriate processes to ensure the proper implementation of the Epic Nexus QHIN Policies in accordance with the requirements of applicable Framework Agreements, and the business needs of Epic Nexus;
 - 2.4. Participating in the processes developed to ensure the proper performance of governance functions in accordance with requirements of the Framework Agreements and the business needs of Epic Nexus; 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 Nexus QHIN and the performance of governance functions as required by the Epic Nexus QHIN Policies, and any applicable Framework Agreements.
3. **Epic Nexus QHIN Dispute Resolution.** This Section 3 applies only to Disputes between Epic Nexus QHIN Participants, or their Subparticipants, which arise in connection with the Epic Nexus QHIN. The following provisions do not apply to Disputes between an Epic Nexus QHIN Participant and the Participants of a QHIN other than the Epic Nexus QHIN. Further, disputes between Epic Nexus QHIN Participants or their

Subparticipants that arise in connection with exchange activities that do not utilize the Epic Nexus QHIN will be resolved using the appropriate process for the exchange framework utilized.

- 3.1. **Informal Dispute Resolution.** 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 Nexus QHIN Participants through informal discussions. If, after good faith efforts, Participant and the other Epic Nexus 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 Nexus QHIN Policy: Dispute Resolution and Participant Enforcement. As detailed in the Epic Nexus QHIN Policy: Dispute Resolution and Participant Enforcement, the Governing Council will consider the issue, render a decision, and impose sanctions as appropriate.
- 3.2. **Formal Dispute Resolution Process.** 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 Epic Nexus QHIN Dispute Resolution Process as established by the Epic Nexus QHIN Policy: Dispute Resolution and Participant Enforcement. 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 Epic Nexus QHIN 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.
- 3.3. **Immediate Injunctive Relief.** Notwithstanding Sections 3.1 and 3.2, Participant may be relieved of its obligation to participate in the Epic Nexus QHIN Dispute Resolution Process if Participant (i) makes a good faith determination that another Epic QHIN Participant's or Epic Nexus QHIN Subparticipant's 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 Nexus QHIN Participant or Epic Nexus QHIN Subparticipant in a court of competent jurisdiction. Participant must inform Epic Nexus 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. 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.

If the injunctive relief sought pursuant to Section 3.3 is not granted and Participant chooses to pursue the Dispute, the Dispute must be submitted to the Epic Nexus QHIN Dispute Resolution Process in accordance with Sections 3.1 and 3.2.
- 3.4. **Activities during the Epic Nexus QHIN 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 the TEFCA Participant/Subparticipant Terms of Participation.
- 3.5. **Implementation of Agreed Resolution.** If at any point during the Epic Nexus QHIN Dispute Resolution Process Participant and all other parties to the Dispute accept a proposed resolution of the Dispute, Participant and Epic Nexus each agree to implement the terms of the resolution in the agreed upon timeframe.
- 3.6. **Reservation of Rights.** If, following the Epic Nexus QHIN Dispute Resolution Process, in the opinion of Participant, the Dispute was not adequately resolved, Participant may pursue any additional remedies available to it.
4. **Contributions; IP Rights; Ownership of Materials; License.**
 - 4.1. Participant acknowledges that Epic Nexus QHIN IP is protected under applicable United States law. Participant is encouraged to provide Contributions to the Epic Nexus QHIN and understands that Epic Nexus must obtain certain rights in such Contributions in order to include the Contribution in Epic Nexus QHIN IP.
 - 4.2. With respect to each Contribution, Participant represents that: (a) no information in the Contribution is confidential; (b) Epic Nexus 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.

- 4.3. 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 Nexus and its affiliated entities including Epic Parent 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 Nexus QHIN IP even though it may include Contributions; and (b) permit others, at Epic Nexus' sole discretion, to reproduce in whole or in part the resulting Epic Nexus QHIN IP.
- 4.4. Participant shall, as applicable, identify to Epic Nexus or its affiliates including Epic Parent, 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. 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 Nexus QHIN relevant to any person or entity using the patented item(s) to participate in the Epic Nexus QHIN.
- 4.5. The trademarks, service marks, trade dress, business names, company names, and logos owned by Epic Nexus or its affiliates including Epic Parent, are an important part of maintaining the strength and reputation of Epic Nexus and its efforts to enable the interoperable exchange of healthcare information. Participant may not use Epic Nexus QHIN IP or the intellectual property of Epic Nexus' affiliates including Epic Parent to brand any of Participant's products or services and may not incorporate any Epic Nexus QHIN IP in any of Participant's domain names except as provided in guidelines on the use of trademarks published by Epic Nexus or its affiliates including Epic Parent. Upon Participant being recognized by Epic Nexus as an Epic Nexus QHIN Participant, Participant shall be entitled to use and display "Epic Nexus QHIN Participant" within its printed marketing materials, including on Participant's website, to indicate that Participant has been accepted by Epic Nexus as an Epic Nexus 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 Nexus QHIN IP or the intellectual property of Epic Nexus' affiliates including Epic Parent, or any element confusingly similar to Epic Nexus QHIN IP or the intellectual property of Epic Nexus' affiliates including Epic Parent. 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, TM or SM, as more fully set out in guidelines on use of trademarks published by Epic Parent, and indicate in the text that the Epic Mark used "is the trademark of Epic Systems Corporation," or "is the service mark of Epic Systems Corporation," respectively.
5. **Fees.** Epic Nexus will annually invoice Epic Nexus QHIN Participants for their participation in the Epic Nexus QHIN. Additional pricing information is available in the Epic Nexus QHIN Participation Fees. Invoices shall be due and payable by Participant within thirty (30) days after receipt thereof unless otherwise agreed, or Participant notifies Epic Nexus 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 Nexus 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.
6. **Formatting Requirements.** Prior to participating in the Epic Nexus QHIN, Participant will work with Epic Nexus to ensure that its system is configured to make all data elements required by a Framework Agreement, the QTF, or an applicable SOP available for exchange with other QHIN Participants via the Epic Nexus QHIN. Additionally, if the data elements required by a Framework Agreement, the QTF, or an applicable SOP are amended, Participant will work with Epic Nexus to ensure Participant's system is configured to

make any additional data elements available for exchange via the Epic Nexus QHIN prior to the effective date of the amendment.

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.

8. **Accountability.**

8.1. **General.** 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 a Framework 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.

8.2. **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, a Framework Agreement, an applicable SOP, and/or an Epic Nexus QHIN Policy.

8.3. **Harm to the Epic Nexus QHIN.** Participant shall be responsible for harm suffered by the Epic Nexus QHIN to the extent the harm was caused by Participant's or its Subparticipant's breach of this Agreement, a Framework Agreement, an applicable SOP, and/or an Epic Nexus QHIN Policy.

8.4. **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 this Agreement, a Framework Agreement, an applicable SOP, and/or an Epic Nexus QHIN Policy.

8.5. **Epic QHIN Accountability.** Participant will not hold Epic Nexus, its affiliates including Epic Parent, or anyone acting on Epic Nexus' behalf, liable for any damages, losses, liabilities or injuries arising from or related to this Agreement or a Framework Agreement, except to the extent that such damages, losses, liabilities, or injuries are the direct result of Epic Nexus' breach of this Agreement. This section shall not be construed as a hold harmless or indemnification provision.

8.6. **Limitation of Liability.** Notwithstanding anything in this Agreement to the contrary, in no event shall Epic Nexus' or its affiliates' including Epic Parent's total liability to Participant and all third party beneficiaries arising from or relating to this Agreement or a Framework 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 Nexus. Nothing in this Section shall be construed to create liability for a governmental agency or instrumentality or otherwise waive sovereign immunity.

9. **Monitoring.** In order to confirm compliance with this Agreement, Epic Nexus, through its agents, employees, and independent contractors, shall have the right, but not the obligation, to monitor exchange activities enabled by the Epic Nexus QHIN. Participant agrees to cooperate with Epic Nexus in these monitoring activities and to provide, at Epic Nexus' reasonable request, information in the furtherance of Epic Nexus' 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 Nexus QHIN Use Case, as outlined in an

applicable Epic Nexus QHIN Policy. Nothing in this Agreement shall be construed to allow Epic Nexus to have direct access to the information systems of any Epic Nexus QHIN Participant or its Subparticipants.

10. **Miscellaneous**

10.1. **Amendment.** This Agreement, and any attachments or exhibits incorporated by reference in this Agreement, may be amended by Epic Nexus from time to time. Epic Nexus will provide notice of any amendment to Participant and all other Epic Nexus QHIN Participants at least ninety (90) calendar days prior to the effective date of the amendment. Participant's continued participation in the Epic Nexus 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 Nexus determines, based on advice from legal counsel, that an amendment is required for Epic Nexus to remain compliant with Applicable Law or the Common Agreement, or if an amendment is mandated by the RCE, Epic Nexus is not required to provide advance notice regarding the amendment. However, when commercially reasonable, Epic Nexus shall provide sixty (60) days advance notice of the amendment.

10.2. **Epic Nexus QHIN Policies.**

10.2.1. **Participation Requirements:** Participant will satisfy the requirements listed in an applicable Epic Nexus QHIN Policy, including licensing and implementing certain products from Epic Parent and enabling functionality so Participant can respond to queries for patient information from other QHIN Participants, before they begin their participation in the Epic Nexus QHIN.

10.2.2. **Other Policy Documents.** Participant agrees to abide by, and, as applicable, ensure their Sub-Participants abide by, the then-current Epic Nexus QHIN Policies. Failure to comply with the requirements of an applicable Epic Nexus QHIN Policy may result in Epic Nexus or the Governing Council taking action consistent with the applicable policies and procedures.

10.3. **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.

10.4. **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)), and any counterpart so delivered will be deemed to have been duly and validly delivered and valid and effective for all purposes.

10.5. **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.

10.6. **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 Epic Parent 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.

- 10.7. **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.
- 10.8. **Independent Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between Participant and Epic Nexus. 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.
- 10.9. **Notices.** All notices to be made under this Agreement shall be given in writing to Participant and Epic Nexus by email, or 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.
- 10.10. **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.
- 10.11. **Survival. (Required Flow-down)** The following provisions will survive for the specified period following the expiration or termination of this Agreement.
 - 10.11.1. Section 3, Epic Nexus QHIN Dispute Resolution, shall survive the expiration or termination of this Agreement indefinitely.
 - 10.11.2. Section 4, Contributions; IP Rights; Ownership of Materials; License, shall survive the expiration or termination of this Agreement indefinitely.
 - 10.11.3. Section 5, Fees, shall survive the expiration or termination of this Agreement indefinitely.
 - 10.11.4. Section 8, Accountability, shall survive the expiration or termination of this Agreement indefinitely.
 - 10.11.5. Section 10, Miscellaneous, will survive the expiration or termination of this Agreement indefinitely.

SAN BERNARDINO COUNTY

By: *Dawn M Rowe*
 Name: Dawn M. Rowe
 Title: Chair, Board of Supervisors
 Date: JAN 14 2025

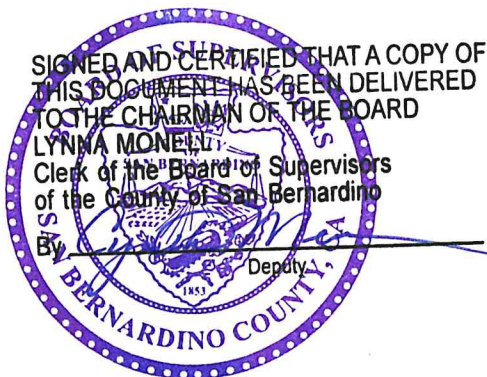
EPIC NEXUS, INC.

By: *Dave Fuhrmann*
 Name: Dave Fuhrmann
 Title: Vice President
 Date: November 20, 2024

Notice Address:

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

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SB



**Participant/Subparticipant Terms of Participation Exhibit to the
Epic Nexus QHIN Participation Agreement**

Participant/Subparticipant Terms of Participation

Introduction:

Section 4003 of the 21st Century Cures Act directed the U.S. Department of Health and Human Services (“HHS”) National Coordinator for Health Information Technology to, “in collaboration with the National Institute of Standards and Technology and other relevant agencies within the Department of Health and Human Services, for the purpose of ensuring full network-to-network exchange of health information, convene public-private and public-public partnerships to build consensus and develop or support a trusted exchange framework, including a common agreement among health information networks nationally” (the “Trusted Exchange Framework and Common Agreement”SM or TEFCASM). The common agreement referenced in the foregoing sentence is the Common Agreement for Nationwide Health Information Interoperability entered into by each Qualified Health Information NetworkTM (“QHINTM”) that has been Designated to participate in TEFCA. The Common Agreement requires that every QHIN contractually obligate their TEFCA Participants, who in turn are required to contractually obligate their Subparticipants to comply with the Participant/Subparticipant Terms of Participation (“ToP”).

Upstream QHIN, Participant, or Subparticipant (“QPS”), as defined below, must ensure that these ToP are included, directly or by reference, in a legally enforceable contract in which the Upstream QPS binds its Participants and Subparticipants. **These ToP must be presented and entered into WITHOUT modification, *except*** that Upstream QPS should insert its name in the highlighted field(s) below and the name of the QHIN if Upstream QPS is not a QHIN and may, but is not required to, add signature lines to the end of these ToP. For the avoidance of doubt, the foregoing is not intended to prohibit Upstream QPS from imposing additional terms upon its Participants and/or Subparticipants, provided any such terms do not conflict with the ToP with respect to TEFCA Exchange.

Participant/Subparticipant Terms of Participation:

Epic Nexus, Inc. (“Upstream QPS”) participates in TEFCA by providing technical and/or governance services to its Participants and/or Subparticipants to facilitate their ability to engage in TEFCA Exchange consistent with all applicable legal and contractual requirements. Upstream QPS is a QHIN. Your organization (“You”) wishes to become a Participant or Subparticipant, as applicable, of Upstream QPS so that You may participate in TEFCA Exchange.

As a Participant or Subparticipant, You agree to abide by these Participant/Subparticipant Terms of Participation (“ToP”).

1. Definitions and Relevant Terminology.

- 1.1 **Defined Terms.** Capitalized terms used in these ToP shall have the meaning set forth below. Where a definition includes one or more citations to a statute, regulation, or standard, the definition shall be interpreted to refer to such statute, regulation, or standard as may be amended from time-to-time.

Applicable Law: 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.

Breach of Unencrypted Individually Identifiable Information: the acquisition, access, or Disclosure of unencrypted Individually Identifiable Information maintained by an IAS Provider that compromises the security or privacy of the unencrypted Individually Identifiable Information.

Business Associate: has the meaning assigned to such term at 45 CFR § 160.103.

Business Associate Agreement (BAA): a contract, agreement, or other arrangement that satisfies the implementation specifications described within 45 CFR § 164.314(a) and 164.504(e), as applicable.

Common Agreement: unless otherwise expressly indicated, the Common Agreement for Nationwide Health Information Interoperability, the QHIN Technical Framework (QTF), all Standard Operating Procedures (SOPs), and all other attachments, exhibits, and artifacts incorporated therein by reference.

Confidential Information: any information that is designated as Confidential Information by the CI Discloser, or that a reasonable person would understand to be of a confidential nature, and is disclosed to a CI Recipient pursuant to a Framework Agreement. For the avoidance of doubt, "Confidential Information" does not include electronic protected health information (ePHI), as defined herein, that is subject to a Business Associate Agreement and/or other provisions of a Framework Agreement.

Notwithstanding any label to the contrary, "Confidential Information" does not include any information that: (i) is or becomes known publicly through no fault of the CI Recipient; or (ii) is learned by the CI Recipient from a third party that the CI Recipient reasonably believes is entitled to disclose it without restriction; or (iii) is already known to the CI Recipient before receipt from the CI Discloser, as shown by the CI Recipient's written records; or (iv) is independently developed by CI Recipient without the use of or reference to the CI Discloser's Confidential Information, as shown by the CI Recipient's written records, and was not subject to confidentiality restrictions prior to receipt of such information from the CI Discloser.

Confidential Information (CI) Discloser: a person or entity that discloses Confidential Information.

Confidential Information (CI) Recipient: a person or entity that receives Confidential Information.

Connectivity Services: the technical services provided by a QHIN, Participant, or Subparticipant to its Participants and Subparticipants that facilitate TEFCO Exchange and are consistent with the requirements of the then-applicable QHIN Technical Framework.

Covered Entity: has the meaning assigned to such term at 45 CFR § 160.103.

Designated Network: the Health Information Network that a QHIN uses to offer and provide the Designated Network Services.

Designated Network Governance Body: a representative and participatory group or groups that approve the processes for fulfilling the Governance Functions and participate in such Governance Functions for Signatory's Designated Network.

Designated Network Services: the Connectivity Services and/or Governance Services.

Directory Entry(ies): listing of each Node controlled by a QHIN, Participant or Subparticipant, which includes the endpoint resource for such Node(s) and any other organizational or technical information required by the QTF or an applicable SOP.

Disclosure (including its correlative meanings "Disclose," "Disclosed," and "Disclosing"): the release, transfer, provision of access to, or divulging in any manner of TEFCO Information (TI) outside the entity holding the information.

Discover (including its correlative meanings "Discovery" and "Discovering"): the first day on which something is known to the QHIN, Participant, or Subparticipant, or by exercising reasonable diligence would have been known, to the QHIN, Participant, Subparticipant.

Discriminatory Manner: an act or omission that is inconsistently taken or not taken with respect to any similarly situated 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.

Electronic Protected Health Information (ePHI): has the meaning assigned to such term at 45 CFR § 160.103.

Exchange Purpose or XP: means the reason, as authorized by a Framework Agreement, including the applicable SOP(s), for a transmission, Query, Use, Disclosure, or Response transacted through TEFCA Exchange.

Framework Agreement(s): with respect to QHINs, the Common Agreement; and with respect to a Participant or Subparticipant, the ToP.

FTC Rule: the Health Breach Notification Rule promulgated by the Federal Trade Commission set forth at 16 CFR Part 318.

Government Benefits Determination: a determination made by any agency, instrumentality, or other unit of the federal, State, local, or tribal government as to whether an Individual qualifies for government benefits for any purpose other than health care (e.g., Social Security disability benefits) to the extent permitted by Applicable Law. Disclosure of TI for this purpose may require an authorization that complies with Applicable Law.

Government Health Care Entity: 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.

Governance Functions: the functions, activities, and responsibilities of the Designated Network Governance Body as set forth in an applicable SOP.

Governance Services: the governance functions described in an applicable SOP, which are performed by a QHIN's Designated Network Governance Body for its Participants and Subparticipants to facilitate TEFCA Exchange in compliance with the then-applicable requirements of the Framework Agreements.

Health Care Provider: meets the definition of such term in either 45 CFR § 171.102 or in the HIPAA Rules at 45 CFR § 160.103.

Health Information Network (HIN): has the meaning assigned to the term "Health Information Network or Health Information Exchange" in the information blocking regulations at 45 CFR § 171.102.

HIPAA: the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191 and the Health Information Technology for Economic and Clinical Health Act of 2009, Pub. Law 111-5.

HIPAA Rules: the regulations set forth at 45 CFR Parts 160, 162, and 164.

HIPAA Privacy Rule: the regulations set forth at 45 CFR Parts 160 and 164, Subparts A and E.

HIPAA Security Rule: the regulations set forth at 45 CFR Part 160 and Part 164, Subpart C.

Implementation Date: the date sixty (60) calendar days after publication of version 2 of the Common Agreement in the Federal Register.

Individual: has the meaning assigned to such term at 45 CFR § 171.202(a)(2).

Individual Access Services Incident (IAS Incident): a TEFCA Security Incident or a Breach of Unencrypted Individually Identifiable Information maintained by an IAS Provider.

Individual Access Service Consent (IAS Consent): an IAS Provider's own supplied form for obtaining express written consent from the Individual in connection with the IAS.

Individual Access Services Provider (IAS Provider): each QHIN, Participant, and Subparticipant that offers Individual Access Services (IAS).

Individual Access Services (IAS): the services provided to an Individual by a QHIN, Participant, or Subparticipant that has a direct contractual relationship with such Individual in which the QHIN, Participant, or Subparticipant, as applicable, agrees to satisfy that Individual's ability to use TEFCA Exchange to access, inspect, obtain, or transmit a copy of that Individual's Required Information.

Individually Identifiable Information: 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.

Initiating Node: a Node through which a QHIN, Participant, or Subparticipant initiates transactions for TEFCA Exchange and, to the extent such transaction is a Query, receives a Response to such Query.

Node: a technical system that is controlled directly or indirectly by a QHIN, Participant, or Subparticipant and that is listed in the RCE Directory Service.

Non-HIPAA Entity (NHE): a QHIN, Participant, or Subparticipant that is neither a Covered Entity nor a Business Associate as defined under the HIPAA Rules with regard to activities under a Framework Agreement. To the extent a QHIN, Participant, or Subparticipant is a Hybrid entity, as defined in 45 CFR § 164.103, such QHIN, Participant, or Subparticipant shall be considered a Non-HIPAA Entity with respect to TEFC Exchange activities related to such QHIN, Participant, or Subparticipant's non-covered components.

ONC: the U.S. Department of Health and Human Services Office of the National Coordinator for Health Information Technology.

Participant: to the extent permitted by applicable SOP(s), a U.S. Entity that has entered into the ToP in a legally binding contract with a QHIN to use the QHIN's Designated Network Services to participate in TEFC Exchange in compliance with the ToP.

Participant/Subparticipant Terms of Participation (ToP): the requirements set forth in Exhibit 1 to the Common Agreement, as reflected herein, to which: QHINs must contractually obligate their Participants to agree; to which QHINs must contractually obligate their Participants to contractually obligate their Subparticipants and Subparticipants of the Subparticipants to agree, in order to participate in TEFC Exchange including the QHIN Technical Framework (QTF), all applicable Standard Operating Procedures (SOPs), and all other attachments, exhibits, and artifacts incorporated therein by reference.

Privacy and Security Notice: an IAS Provider's own supplied written privacy and security notice that contains the information required by the applicable SOP(s).

Protected Health Information (PHI): has the meaning assigned to such term at 45 CFR § 160.103.

Public Health Authority: has the meaning assigned to such term at 45 CFR § 164.501.

QHIN Technical Framework (QTF): the most recent effective version of the document that contains the technical, functional, privacy, and security requirements for TEFC Exchange.

Qualified Health Information Network (QHIN): to the extent permitted by applicable SOP(s), a Health Information Network that is a U.S. Entity that has been Designated by the RCE and is a party to the Common Agreement countersigned by the RCE.

Query(ies) (including its correlative uses/tenses “Queried” and “Querying”): the act of asking for information through TEFCA Exchange.

RCE Directory Service: a technical service provided by the RCE that enables QHINs to identify their Nodes to enable TEFCA Exchange. The requirements for use of, inclusion in, and maintenance of the RCE Directory Service are set forth in the Framework Agreements, QTF, and applicable SOPs.

Recognized Coordinating Entity[®] (RCE[™]): the entity selected by ONC that enters 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.

Required Information: the Electronic Health Information, as defined in 45 CFR § 171.102, that is (i) maintained in a Responding Node by any QHIN, Participant, or Subparticipant prior to or during the term of the applicable Framework Agreement and (ii) relevant for a required XP Code, as set forth in the QTF or an applicable SOP(s).

Responding Node: a Node through which the QHIN, Participant, or Subparticipant Responds to a received transaction for TEFCA Exchange.

Response(s) (including its correlative uses/tenses “Responds,” “Responded” and “Responding”): the act of providing the information that is the subject of a Query or otherwise transmitting a message in response to a Query through TEFCA Exchange.

Standard Operating Procedure(s) or SOP(s): a written procedure or other provision that is adopted pursuant to the Common Agreement and incorporated by reference into the Framework Agreements to provide detailed information or requirements related to TEFCA Exchange, including all amendments thereto. Each SOP identifies the relevant group(s) to which the SOP applies, including whether Participants or Subparticipants are required to comply with a given SOP.

State: any of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Subparticipant: to the extent permitted by applicable SOP(s), a U.S. Entity that has entered into the ToP in a legally binding contract with a Participant or another Subparticipant to use the Participant's or Subparticipant's Connectivity Services to participate in TEFCA Exchange in compliance with the ToP.

TEFCA Exchange: the transaction of information between Nodes using an XP Code.

TEFCA Information (TI): any information that is transacted through TEFCA Exchange except to the extent that such information is received by a QHIN, Participant, or Subparticipant that is a Covered Entity, Business Associate, or NHE that is exempt from compliance with the Privacy section of the applicable Framework Agreement and is incorporated into such recipient's system of records, at which point the information is no longer TI with respect to such recipient and is governed by the HIPAA Rules and other Applicable Law.

TEFCA Security Incident(s):

- (i) An unauthorized acquisition, access, Disclosure, or Use of unencrypted TI using TEFCA Exchange, but **NOT** including any of the following:
 - (a) Any unintentional acquisition, access, Use, or Disclosure of TI by a Workforce Member or person acting under the authority of a QHIN, Participant, or Subparticipant, if such acquisition, access, Use, or Disclosure (i) was made in good faith, (ii) was made by a person acting within their scope of authority, (iii) was made to another Workforce Member or person acting under the authority of any QHIN, Participant, or Subparticipant, and (iv) does not result in further acquisition, access, Use, or Disclosure in a manner not permitted under Applicable Law and the Framework Agreements.
 - (b) 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 have been able to retain such information.
 - (c) A Disclosure of TI that has been de-identified in accordance with the standard at 45 CFR § 164.514(b).
- (ii) Other security events (e.g., ransomware attacks), as set forth in an SOP, that adversely affect a QHIN's, Participant's, or Subparticipant's participation in TEFCA Exchange.

Threat Condition: (i) a breach of a material provision of a Framework Agreement that has not been cured within fifteen (15) days of receiving notice of the material breach (or such other period of time to which the Parties have agreed), which notice shall include such specific information about the breach that the RCE has available at

the time of the notice; or (ii) a TEFCA Security Incident; or (iii) an event that RCE, a QHIN, its Participant, or their Subparticipant has reason to believe will disrupt normal TEFCA Exchange, either due to actual compromise of or the need to mitigate demonstrated vulnerabilities in systems or data of the QHIN, Participant, or Subparticipant, as applicable, or could be replicated in the systems, networks, applications, or data of another QHIN, Participant, or Subparticipant; or (iv) any event that could pose a risk to the interests of national security as directed by an agency of the United States government.

United States: the fifty (50) States, the District of Columbia, and the territories and possessions of the United States including, without limitation, all military bases or other military installations, embassies, and consulates operated by the United States government.

U.S. Entity/Entities: any corporation, limited liability company, partnership, or other legal entity that meets all of the following requirements:

- (i) The entity is organized under the laws of a State or commonwealth of the United States or the federal law of the United States and is subject to the jurisdiction of the United States and the State or commonwealth under which it was formed;
- (ii) The entity's principal place of business, as determined under federal common law, is in the United States; and
- (iii) None of the entity's directors, officers, or executives, and none of the owners with a five percent (5%) or greater interest in the entity, are listed on the *Specially Designated Nationals and Blocked Persons List* published by the United States Department of the Treasury's Office of Foreign Asset Control or on the United States Department of Health and Human Services, Office of Inspector General's *List of Excluded Individuals/Entities*.

Use(s) (including correlative uses/tenses, such as "Uses," "Used," and "Using"): with respect to TI, means the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

Workforce Member(s): any employees, volunteers, trainees, and other persons whose conduct, in the performance of work for an entity, is under the direct control of such entity, whether or not they are paid by the entity.

XP Code: the code used to identify the XP in any given transaction, as set forth in the applicable SOP(s).

1.2 ToP Terminology.

1.2.1 References to You and QHINs, Participants, and Subparticipants. As set forth in its definition and in the introductory paragraph of these ToP, the term “You” is used to refer to the specific entity that is a party to these ToP with the Upstream QPS. (You and Upstream QPS may also be referred to herein individually as a “Party” or collectively as the “Parties.”) Any and all rights and obligations of a QHIN, Participant or Subparticipant stated herein are binding upon all other QHINs, Participants, and Subparticipants that have entered into a Framework Agreement. References herein to “QHINs,” “other Participants,” “other Subparticipants,” and similar such terms are used to refer to any and all other organizations that have signed a Framework Agreement.

1.2.2 General Rule of Construction. For the avoidance of doubt, a reference to a specific section of the ToP in a particular section does not mean that other sections of the ToP that expressly apply to You are inapplicable. A reference in these ToP to any law, any regulation, or to Applicable Law includes any amendment, modification or replacement to such law, regulation, or Applicable Law.

1.2.3 Terms of Participation for Subparticipants. You shall contractually obligate your Subparticipants, if any, to comply with the ToP. Notwithstanding the foregoing, for any entity that became Your Subparticipant prior to the Implementation Date, You shall (i) contractually obligate such entity to comply with the ToP within one-hundred eighty (180) days of the Implementation Date, provided that such Subparticipant is and remains a party to the Participant Subparticipant Agreement, as defined in and required by Common Agreement Version 1.1, during such period; or (ii) terminate such entity’s ability to engage in TEFCA Exchange upon the earlier of the date of termination of the existing Participant-Subparticipant Agreement or one-hundred (180) days after the Implementation Date.

2. **Cooperation and Non-Discrimination.**

2.1 Cooperation. You understand and acknowledge that numerous activities with respect to the ToP will likely involve the RCE, QHINs, and their respective Participants and Subparticipants, as well as employees, agents, third-party contractors, vendors, or consultants of each of them. You shall reasonably cooperate with the RCE, ONC, QHINs and their respective Participants and Subparticipants in all matters related to TEFCA Exchange, including any dispute resolution activities in which You are involved. Expectations for reasonable

cooperation are set forth in an SOP. The costs of cooperation to You shall be borne by You and shall not be charged to the RCE or other QHINs. Nothing in this Section 2.1 shall modify or replace the TEFCA Security Incident notification obligations under Section 8.3 and, if applicable, the IAS Incident notification obligations under Section 6.3.2 of the ToP.

2.2 Non-Discrimination.

- 2.2.1 Prohibition Against Exclusivity. Upstream QPS shall not prohibit or attempt to prohibit You, nor shall You or Upstream QPS prohibit or attempt to prohibit any of Your Subparticipants, if any, from joining, exchanging with, conducting other transactions with, or supporting any other networks or exchange frameworks that use services *other than* the Upstream QPS's Designated Network Services or Your Connectivity Services, concurrently with Your or Your Subparticipants' participation in TEFCA Exchange. Notwithstanding the foregoing, this subsection does not preclude You from including and enforcing reasonable term limits in the contracts with Your Subparticipants related to Your Subparticipants' use of Your Connectivity Services.
- 2.2.2 No Discriminatory Limits on Exchange of TI. Neither You nor Upstream QPS shall engage in TEFCA Exchange, refrain from engaging in TEFCA Exchange, or limit TEFCA Exchange with any QHIN, Participant, Subparticipant, or Individual in a Discriminatory Manner. Notwithstanding the foregoing, if You refrain from engaging in TEFCA Exchange or limit interoperability with any other QHIN, Participant, or Subparticipant under the following circumstances, Your actions or inactions shall not be deemed discriminatory: (i) Your Connectivity Services require load balancing of network traffic or similar activities provided such activities are implemented in a consistent and non-discriminatory manner for a period of time no longer than necessary to address the network traffic issue; (ii) You have a reasonable and good-faith belief that the other QHIN, Participant, or Subparticipant has not satisfied or will not be able to satisfy the applicable terms of a Framework Agreement (including compliance with Applicable Law) in any material respect; and/or (iii) Your actions or inactions are consistent with or permitted by an applicable SOP. One QHIN, Participant, or Subparticipant suspending its exchange activities with another QHIN, Participant, or Subparticipant in accordance with Section 17.4.2 of the Common Agreement or Section 10.4.5 of the ToP, as applicable, shall not be deemed discriminatory.
- 2.2.3 Updates to Connectivity Services. In revising and updating Connectivity Services from time to time, You will use commercially reasonable efforts to

do so in accordance with generally accepted industry practices and to implement any changes in a non-discriminatory manner; provided, however, this provision shall not apply to limit modifications or updates to the extent that such revisions or updates are required by Applicable Law or implemented to respond promptly to newly discovered privacy or security threats.

2.2.4 Notice of Updates to Connectivity Services. You shall implement a reporting protocol to provide reasonable prior written notice of all modifications or updates of Your Connectivity Services to Upstream QPS and Your Subparticipants if such revisions or updates are expected to adversely affect Your ability to engage in TEFCA Exchange or require changes in the Connectivity Services of Upstream QPS or Your Subparticipants, regardless of whether they are necessary due to Applicable Law or newly discovered privacy or security threats.

3. Confidentiality and Accountability.

3.1 Confidential Information. You and Upstream QPS each agree to use and disclose all Confidential Information received pursuant to these ToP only as authorized in these ToP and any applicable SOP(s) and solely for the purposes of performing its obligations under a Framework Agreement or the proper exchange of information through TEFCA Exchange and for no other purpose. You and Upstream QPS may act as a CI Discloser and a CI Recipient, accordingly. A CI Recipient may disclose the Confidential Information it receives only to its Workforce Members 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 CI Discloser's Confidential Information in a manner substantially equivalent to the terms required herein for the treatment of Confidential Information. If a CI Recipient must disclose the CI Discloser's Confidential Information under operation of law, it may do so provided that, to the extent permitted by Applicable Law, the CI Recipient gives the CI Discloser reasonable notice to allow the CI Discloser to object to such redisclosure, and such redisclosure is made to the minimum extent necessary to comply with Applicable Law.

3.2 Disclosure of Confidential Information. Nothing herein shall be interpreted to prohibit Upstream QPS or the RCE from disclosing any Confidential Information to ONC. You acknowledge that ONC, as a Federal government agency, is subject to the Freedom of Information Act. Any disclosure of Your Confidential Information to

ONC or any ONC contractor will be subject to Applicable Law, as well as the limitations, procedures, and other relevant provisions of any applicable SOP(s).

- 3.3 ONC's and the RCE's Approach when Requesting Confidential Information. As a matter of general policy, ONC will request only the limited set of Confidential Information that ONC believes is necessary to inform the specific facts and circumstances of a matter. The RCE will request only the limited set of Confidential Information that the RCE believes is necessary to inform the specific facts and circumstances of a matter.

4. RCE Directory Service and Directory Entries.

- 4.1 Utilization of Directory Entries. The RCE Directory Service and Directory Entries contained therein shall be used by QHINs solely as necessary to create and maintain operational connectivity to enable TEFCA Exchange. Upstream QPS is providing You with access to, and the right to use, Directory Entries on the express condition that You only use and disclose Directory Entry information as necessary to advance the intended use of the Directory Entries or as required by Applicable Law. For example, You are permitted to disclose Directory Entry information to Your Workforce Members, Your Subparticipant's Workforce Members, and/or to the Workforce Members of health information technology vendors who are engaged in assisting You or Your Subparticipant with establishing and maintaining connectivity via the Framework Agreements. Further, You shall not use another QPS's Directory Entries or information derived therefrom for marketing or any form of promotion of Your own products and services, unless otherwise permitted pursuant to an SOP. In no event shall You use or disclose the information contained in the Directory Entries in a manner that should be reasonably expected to have a detrimental effect on ONC, the RCE, Upstream QPS, Your Subparticipants, other QHINs, other Participants, other Subparticipants, or any other individual or organization. For the avoidance of doubt, Directory Entries are Confidential Information of the CI Discloser except to the extent such information meets one of the exceptions to the definition of Confidential Information. Nothing herein shall be interpreted to prohibit a QHIN or Upstream QPS from publicly disclosing the identity of its own Participants or Subparticipants.
- 4.2 ToP Record. You must maintain a record of all ToPs into which You enter with Your Subparticipants, if any, regardless of whether such Subparticipants are listed in the RCE Directory Services. Such record must be provided to the RCE within four (4) business days following the RCE's or Upstream QPS's written request unless such other timeframe is agreed to by the RCE.

5. TEFCA Exchange Activities.

- 5.1 **Utilization of TEFCA Exchange.** You may only utilize Connectivity Services for purposes of facilitating TEFCA Exchange. You may only utilize TEFCA Exchange for an XP. To the extent there are limitations on what types of Participants or Subparticipants may transact TEFCA Information for a specific XP, such limitations will be set forth in the applicable SOP(s). All TEFCA Exchange is governed by and must comply with the Framework Agreements governing the QHINs, Participants, and Subparticipants engaging in the TEFCA Exchange.

To the extent that Upstream QPS provides you with access to other health information exchange networks, these ToP do not affect these other activities or the reasons for which You may request and exchange information within these other networks. Such activities are not in any way limited by the Framework Agreements provided the transactions are not TEFCA Exchange.

- 5.2 **Uses.** You may Use TI in any manner that: (i) is not prohibited by Applicable Law; (ii) is consistent with Your Privacy and Security Notice, if applicable; and (iii) is in accordance with Sections 7 and 8 of these ToP.
- 5.3 **Disclosures.** You may Disclose TI provided such Disclosure: (i) is not prohibited by Applicable Law; (ii) is consistent with Your Privacy and Security Notice, if applicable; and (iii) is in accordance with Sections 7 and 8 of these ToP.
- 5.4 **Responses.** Except as otherwise set forth in an applicable SOP, Your Responding Nodes must Respond to Queries for all XP Codes that are identified as "required." in the applicable SOP(s). Such Response must include all Required Information. Notwithstanding the foregoing, You may withhold some or all of the Required Information to the extent necessary to comply with Applicable Law.
- 5.5 **Special Legal Requirements.** If and to the extent Applicable Law requires that an Individual either consent to, approve, or provide an authorization for the Use or Disclosure of that Individual's information to You, such as a more stringent federal or State law relating to sensitive health information, then You shall refrain from the Use or Disclosure of such information in connection with these ToP unless such Individual's consent, approval, or authorization has been obtained consistent with the requirements of Applicable Law and Section 7 of these ToP, including, without limitation, communicated pursuant to the access consent policy(ies) described in the QTF or applicable SOP(s). 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 You may make such copies of the consent, approval, or authorization available electronically to any QHIN, Participant, or Subparticipant in accordance with the QTF and to the extent

permitted by Applicable Law. You shall maintain written policies and procedures to allow an Individual to revoke such consent, approval, or authorization on a prospective basis. If You are an IAS Provider, the foregoing shall not be interpreted to modify, replace, or diminish the requirements set forth in Section 6 of these ToP and any applicable SOP(s) for obtaining an Individual's express written consent.

6. Individual Access Services.

6.1 IAS Offering(s). You may elect to be an IAS Provider by offering IAS to any Individual in accordance with the requirements of this section and in accordance with all other provisions of these ToP and applicable SOP(s). Nothing in this Section 6 shall modify, terminate, or in any way affect an Individual's right of access under the HIPAA Privacy Rule at 45 CFR § 164.524 if You are a Covered Entity or a Business Associate. Nothing in this Section 6 of these ToP shall be construed as modifying or taking precedence over any provision codified in 45 CFR Part 171. An IAS Provider shall not prohibit or attempt to prohibit any Individual using the IAS of any other IAS Provider or from joining, exchanging with, conducting other transactions with any other networks or exchange frameworks, using services *other than* the IAS Providers' Designated Network Services, concurrently with the QHIN's, Participant's, or Subparticipant's participation in TEFCA Exchange.

6.2 Individual Consent. This Section 6.2 shall apply to You if You are an IAS Provider. The Individual requesting IAS shall be responsible for completing the IAS Consent. The IAS Consent shall include, at a minimum: (i) consent to use the IAS; (ii) the Individual's acknowledgement and agreement to Your Privacy and Security Notice; and (iii) a description of the Individual's rights to access, delete, and export such Individual's Individually Identifiable Information. You may implement secure electronic means (e.g., secure e-mail, secure web portal) by which an Individual may submit the IAS Consent. You shall collect the IAS Consent prior to the Individual's first use of the IAS and prior to any subsequent use if there is any material change in the applicable IAS Consent, including the version of the Privacy and Security Notice referenced therein. Nothing in the IAS Consent may contradict or be inconsistent with any applicable provision of these ToP or the SOP(s). If You are a Covered Entity and have a Notice of Privacy Practices that meets the requirements of 45 CFR § 164.520, You are not required to have a Privacy and Security Notice that meets the requirements of the applicable SOP. Nothing in Section 6 reduces a Covered Entity's obligations under the HIPAA Rules.

- 6.3 Additional Security Requirements for IAS Providers. In addition to meeting the applicable security requirements set forth in Section 8, if You are an IAS Provider, You must further satisfy the requirements of this subsection.
- 6.3.1 Scope of Security Requirements. You must meet the applicable security requirements set forth in Section 8 for all Individually Identifiable Information You maintain as an IAS Provider, regardless of whether such information is TI.
- 6.3.2 IAS Incident Notice to Affected Individuals. If You reasonably believe that an Individual has been affected by an IAS Incident, You must provide such Individual with notification without unreasonable delay and in no case later than sixty (60) days following Discovery of the IAS Incident. The notification required under this section must be written in plain language and shall include, to the extent possible, the information set forth in the applicable SOP(s). To the extent You are already required by Applicable Law to notify an Individual of an incident that would also be an IAS Incident, this section does not require duplicative notification to that Individual.
- 6.4 Survival for IAS Providers. This Section 6.4 shall apply to You if You are an IAS Provider. As between You as an IAS Provider and an Individual, the IAS Provider's obligations in the IAS Consent, including Your requirement to comply with the Privacy and Security Notice and provide Individuals with rights, shall survive for so long as You maintain such Individual's Individually Identifiable Information. If You were an IAS Provider, the requirements of Section 6.3 shall survive termination of these ToP for so long as You maintain Individually Identifiable Information acquired during the term of these ToP as an IAS Provider regardless of whether such information is or was TI.

7. Privacy.

- 7.1 Compliance with the HIPAA Privacy Rule. If You are a NHE (but not to the extent that You are acting as an entity entitled to make a Government Benefits Determination under Applicable Law, a Public Health Authority, or a Government Health Care Entity or any other type of entity exempted from compliance with this Section in an applicable SOP), then You shall comply with the provisions of the HIPAA Privacy Rule listed below with respect to all Individually Identifiable

information as if such information is Protected Health Information and You are a Covered Entity.

7.1.1 From 45 CFR § 164.502, General Rules:

- Subsection (a)(1) – Dealing with permitted Uses and Disclosures, but only to the extent You are authorized to engage in the activities described in this subsection of the HIPAA Privacy Rule for the applicable XP.
- Subsection (a)(2)(i) – Requiring Disclosures to Individuals
- Subsection (a)(5) – Dealing with prohibited Uses and Disclosures
- Subsection (b) – Dealing with the minimum necessary standard
- Subsection (c) – Dealing with agreed-upon restrictions
- Subsection (d) – Dealing with de-identification and re-identification of information
- Subsection (e) – Dealing with Business Associate contracts
- Subsection (f) – Dealing with deceased persons' information
- Subsection (g) – Dealing with personal representatives
- Subsection (h) – Dealing with confidential communications
- Subsection (i) – Dealing with Uses and Disclosures consistent with notice
- Subsection (j) – Dealing with Disclosures by whistleblowers

7.1.2 45 CFR § 164.504(e), Organizational Requirements.

7.1.3 45 CFR § 164.508, Authorization Required. Notwithstanding the foregoing, the provisions of Sections 6.2 shall control and this Section 7.1.3 shall not apply with respect to You if You are an IAS Provider that is a NHE.

7.1.4 45 CFR § 164.510, Uses and Disclosures Requiring Opportunity to Agree or Object. Notwithstanding the foregoing, an IAS Provider that is a NHE but is not a Health Care Provider shall not have the right to make the permissive Disclosures described in § 164.510(a)(3) - Emergency circumstances; provided, however, that an IAS Provider is not prohibited from making such a Disclosure if the Individual has consented to the Disclosure pursuant to Section 6 of these ToP.

7.1.5 45 CFR § 164.512, Authorization or Opportunity to Object Not Required. Notwithstanding the foregoing, an IAS Provider that is a NHE but is not a

Health Care Provider shall not have the right to make the permissive Disclosures described in § 164.512(c) - Standard: Disclosures about victims of abuse, neglect or domestic violence, § 164.512 Subsection (d) - Standard: Uses and Disclosures for health oversight activities, and § 164.512 Subsection (j) - Standard: Uses and Disclosures to avert a serious threat to health or safety; provided, however, that an IAS Provider is not prohibited from making such a Disclosure(s) if the Individual has consented to the Disclosure(s) pursuant to Section 6 of these ToP.

7.1.6 From 45 CFR § 164.514, Other Requirements Relating to Uses and Disclosures:

- Subsections (a)-(c) – Dealing with de-identification requirements that render information **not** Individually Identifiable Information for purposes of this Section 7 and TEFCA Security Incidents
- Subsection (d) – Dealing with minimum necessary requirements
- Subsection (e) – Dealing with Limited Data Sets

7.1.7 45 CFR § 164.522, Rights to Request Privacy Protections.

7.1.8 45 CFR § 164.524, Access of Individuals, except that an IAS Provider that is a NHE shall be subject to the requirements of Section 6 with respect to access by Individuals for purposes of IAS and not this Section 7.1.8.

7.1.9 45 CFR § 164.528, Accounting of Disclosures.

7.1.10 From 45 CFR § 164.530, Administrative Requirements:

- Subsection (a) – Dealing with personnel designations
- Subsection (b) – Dealing with training
- Subsection (c) – Dealing with safeguards
- Subsection (d) – Dealing with complaints
- Subsection (e) – Dealing with sanctions
- Subsection (f) – Dealing with mitigation
- Subsection (g) – Dealing with refraining from intimidating or retaliatory acts
- Subsection (h) – Dealing with waiver of rights
- Subsection (i) – Dealing with policies and procedures
- Subsection (j) – Dealing with documentation

7.2 Written Privacy Policy. You must develop, implement, make publicly available, and act in accordance with a written privacy policy describing Your privacy practices with respect to Individually Identifiable Information that is Used or Disclosed pursuant to these ToP. You can satisfy the written privacy policy requirement by including applicable content consistent with the HIPAA Rules in Your existing privacy policy, except as otherwise stated herein with respect to IAS Providers. If You are a Covered Entity, this written privacy policy requirement does not supplant the HIPAA Privacy Rule obligations to post and distribute a Notice of Privacy Practices that meets the requirements of 45 CFR § 164.520. If You are a Covered Entity, then this written privacy policy requirement can be satisfied by Your Notice of Privacy Practices. If You are an IAS Provider, then the written privacy practices requirement must be in the form of a Privacy and Security Notice that meets the requirements of Section 6.2 of these ToP. Notwithstanding Section 11.1, to the extent the Signatory's written privacy policy is "more stringent" than the HIPAA Privacy Rule provisions listed below, the written privacy policy shall govern. "More stringent" shall have the meaning assigned to it in 45 CFR § 160.202 except the written privacy policy shall be substituted for references to State law and the reference to "standards, requirements or implementation specifications adopted under subpart E of part 164 of this subchapter" shall be limited to those listed below.

8. Security.

8.1.4 Security Controls. You shall implement and maintain appropriate security controls for Individually Identifiable Information that are commensurate with risks to the confidentiality, integrity, and/or availability of the Individually Identifiable Information. If You are a NHE, You shall comply with the HIPAA Security Rule provisions with respect to all Individually Identifiable Information as if such information were Protected Health Information and You were a Covered Entity or Business Associate. You shall comply with any additional security requirements that may be set forth in an SOP applicable to Participants and Subparticipants.

8.2 TEFCA Security Incident Reporting.

8.2.1 Reporting to Upstream QPS. You shall report to Upstream QPS any suspected TEFCA Security Incident, as set forth in the applicable SOP(s). Such report must include sufficient information for Upstream QPS and others affected to understand the nature and likely scope of the TEFCA Security Incident. You shall supplement the information contained in the report as additional relevant information becomes available and cooperate with Upstream QPS and, at the direction of Upstream QPS, with the RCE, and with

other QHINs, Participants, and Subparticipants that are likely impacted by the TEFCA Security Incident.

8.2.2 Reporting to Subparticipants. You shall report any TEFCA Security Incident experienced by or reported to You to Your Subparticipants as required by an applicable SOP.

8.2.3 Compliance with Notification Under Applicable Law. Nothing in this Section 8.3 shall be deemed to modify or replace any breach notification requirements that You may have under the HIPAA Rules, the FTC Rule, or other Applicable Law. To the extent You are already required by Applicable Law to notify Upstream QPS or a Subparticipant of an incident that would also be a TEFCA Security Incident, this section does not require duplicative notification.

8.3 Security Resource Support to Subparticipants. You shall make available to Your Subparticipants (if any): (i) security resources and guidance regarding the protection of TI applicable to the Subparticipants' participation in TEFCA Exchange; and (ii) information and resources that the RCE or Cybersecurity Council makes available to You related to promotion and enhancement of the security of TI under the Framework Agreements.

8.4 TI Outside the United States. You shall only Use TI outside the United States or Disclose TI to any person or entity outside the United States to the extent 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 You are a Covered Entity or Business Associate and as set forth in an applicable SOP.

8.5 Encryption. If You are a NHE (but not to the extent that You are a federal agency or any other type of entity exempted from compliance with this Section in an applicable SOP), You must encrypt all Individually Identifiable Information You maintain, both in transit and at rest, regardless of whether such information is TI. Requirements for encryption may be set forth in an SOP.

9. General Obligations.

9.1 Compliance with Applicable Law and the ToP. You shall comply with all Applicable Law and shall implement and act in accordance with any provision required by the ToP, including all applicable SOPs and provisions of the QTF, when engaging in or facilitating TEFCA Exchange. While each SOP identifies the relevant group(s) to which it applies, not every requirement in an SOP or the QTF will necessarily be

applicable to You. It is Your responsibility to determine, in consultation with Upstream QPS, which of the SOPs and QTF provisions are applicable to You.

- 9.2 **Your Responsibility for Your Subparticipants.** You shall be responsible for taking reasonable steps to confirm that all of Your Subparticipants (if any) are abiding by the ToP, specifically including all applicable SOPs and QTF provisions. In the event that You become aware of a material non-compliance by one of Your Subparticipants, then You shall promptly notify the Subparticipant in writing. Such notice shall inform the Subparticipant that its failure to correct any such deficiencies within thirty (30) days of receiving notice shall constitute a material breach of the ToP, which may result in early termination of these ToP.
- 9.3 **Your Responsibility for Your Third-Party Technology Vendors.** To the extent that You use a third-party technology vendor that will have access to TEFCA Information in connection with Connectivity Services or TEFCA Exchange, You shall include in a written agreement with each such subcontractor or agent a requirement to comply with all applicable provisions of these ToP and a prohibition on engaging in any act or omission that would cause You to violate the terms of these ToP if You had engaged in such act or omission Yourself.
- 9.4 **Fees Charged by QHINs, Participants, or Subparticipants.** You may charge fees to an Initiating Node when Responding to Queries through TEFCA Exchange as defined in an applicable SOP. The foregoing shall not prohibit You from charging Your Subparticipants fees for use of Your Connectivity Services.

10. Term, Termination, and Suspension.

- 10.1 **Term.** These ToP shall become effective upon agreement of both Parties and shall remain in effect until terminated by either Party. You may terminate these ToP by providing at least thirty (30) days' prior written notice of termination to Upstream QPS. Upstream QPS may terminate these ToP by providing at least ninety (90) days' prior written notice to You. Notwithstanding the foregoing, in the event that Upstream QPS's Framework Agreement is terminated, Your ToP shall be immediately terminated.
- 10.2 **Termination for Cause.** Either Party may terminate these ToP for cause if the other Party commits a material breach of a Framework Agreement, and fails to cure its material breach within thirty (30) days of receiving notice specifying the nature of such breach in reasonable detail from the non-breaching Party; provided, however, that if Upstream QPS is diligently working to cure its material breach at the end of this thirty (30) day period, then You must provide Upstream QPS with up to another thirty (30) days to complete its cure.

- 10.3 **Effect of Termination.** Upon termination of these ToP, You will no longer be able to engage in TEFCA Exchange facilitated by or through Upstream QPS. To the extent You store TI, such TI may not be distinguishable from other information maintained by You. When the TI is not distinguishable from other information, it is not possible for You to return or destroy TI You maintain upon termination or expiration of these ToP. Upon termination or expiration of these ToP, if You are subject to Section 7 of these ToP, such sections shall continue to apply so long as the information would be ePHI if maintained by a Covered Entity or Business Associate. The protections required under the HIPAA Security Rule shall also continue to apply to all TI that is ePHI, regardless of whether You are a Covered Entity or Business Associate. The provisions set forth in this Section 10.3 are in addition to those survival provisions set forth in Section 11.9.
- 10.4 **Conflict with Other Agreements Between You and Upstream QPS.** Notwithstanding anything herein to the contrary, in the event You and Upstream QPS are parties to an agreement that provides additional terms related to TEFCA Exchange and that agreement provides for a shorter notice period for termination, such shorter notice period shall control.
- 10.5 **Rights to Suspend.**
- 10.5.1 **RCE's Right to Suspend Your Ability to Engage in TEFCA Exchange.** You acknowledge and agree that the RCE has the authority to suspend, or direct the Upstream QPS to suspend, any QPS's ability to engage in TEFCA Exchange if: (i) there is an alleged violation of the respective Framework Agreement or of Applicable Law by the respective party/parties; (ii) there is a Threat Condition; (iii) the RCE determines that the safety or security of any person or the privacy or security of TI and/or Confidential Information is threatened; (iv) such suspension is in the interests of national security as directed by an agency of the United States government; or (v) there is a situation in which the RCE may suffer material harm and suspension is the only reasonable step that the RCE can take to protect itself. You acknowledge that upon receiving direction from the RCE, You will be suspended as soon as practicable provided, however, if the suspension is based on Subsections 10.5.1(i) or 10.5.1(iv) or a Threat Condition that results in a cognizable threat to the security of TEFCA Exchange or the information that the RCE reasonably believes is TI, then You will be suspended within twenty-four (24) hours of the RCE having directed Your QHIN to effectuate the suspension, unless the RCE specifies a longer period of time is permitted.

10.5.2 Upstream QPS's Right to Suspend Your Ability to Engage in TEFCA Exchange.

You acknowledge and agree that Upstream QPS has the same authority as the RCE to suspend Your ability to engage in TEFCA Exchange, and Your Subparticipant's (if any) ability to engage in TEFCA Exchange, if any of the circumstances described in Subsections 10.5.1 (i)-(iii) above occur with respect to You or any of Your Subparticipants.

- (i) Upstream QPS *may* exercise such right to suspend based on its own determination that any of the circumstances described in Subsections 10.5.1 (i)-(iii) above occurred with respect to You or any of Your Subparticipants.
- (ii) Upstream QPS *must* exercise such right to suspend if directed to do so by the RCE or its Upstream QPS based on its determination that suspension is warranted based on any of the circumstances described in Subsections 10.5.1 (i)-(v) above with respect to You or any of Your Subparticipants.
- (iii) You acknowledge that if Upstream QPS makes a determination that suspension is warranted or receives direction from its Upstream QPS to suspend Your ability to engage in TEFCA Exchange, You will be suspended as soon as practicable provided, however, if the suspension is based on the circumstances described in Subsections 10.5.1(i) or 10.5.1(iv) or a Threat Condition that results in a cognizable threat to the security of TEFCA Exchange or the information that the RCE reasonably believes is TI, then You will be suspended within twenty-four (24) hours of notice of Upstream QPS's determination or receipt of direction from its Upstream QPS, unless Upstream QPS specifies a longer period of time is permitted.

10.5.3 Upstream QPS Suspension. Notwithstanding the foregoing, in the event that Upstream QPS's ability to engage in TEFCA Exchange is suspended, Your and any of Your Subparticipants' ability to engage in TEFCA Exchange will be immediately suspended.

10.5.4 Suspension Rights Granted to You Related to Your Subparticipants. If You have Subparticipants, You acknowledge and agree that You have the same responsibility and authority to suspend Your Subparticipant's ability to engage in TEFCA Exchange if any of the circumstances described in Subsections 10.5.1 (i)-(iii) above occur with respect to any of Your Subparticipants. If You make a determination to suspend, You are required

to promptly notify Upstream QPS of Your decision and the reason(s) for making the decision. If any of Your Subparticipants notify You of their decision to suspend exchange with their Subparticipant(s), You must notify Upstream QPS of such decision.

- (i) You *may* exercise such right to suspend based on Your own determination that any of the circumstances described in Subsections 10.5.1 (i)-(iii) above occurred with respect to any of Your Subparticipants.
- (ii) You *must* exercise such right to suspend if directed to do so, by the RCE or Upstream QPS based on the RCE's determination that suspension is warranted based on any of the circumstances described in Subsections 10.5.1 (i)-(v) above with respect to any of Your Subparticipants.
- (iii) You must effectuate such suspension of Your Subparticipant as soon as practicable provided, however, if the suspension is based on the circumstances described in Subsections 10.5.1(i) or 10.5.1(iv) or a Threat Condition that results in a cognizable threat to the security of TEFCA Exchange or the information that the RCE reasonably believes is TI, then it must be effectuated within twenty-four (24) hours of the triggering event, unless a longer period of time is permitted. For purposes of this subsection, the triggering event is Your determination to suspend, Your receipt of direction from your Upstream QPS to suspend, or the RCE having directed Your QHIN to effectuate the suspension.

10.5.5 Selective Suspension. You may, in good faith and to the extent permitted by Applicable Law, determine that You must suspend exchanging with a QHIN, Participant, or Subparticipant with which You are otherwise required to exchange in accordance with an SOP because of reasonable and legitimate concerns related to the privacy, security, accuracy, or quality of information that is exchanged. If You make this determination, You are required to promptly notify Upstream QPS of Your decision and the reason(s) for making the decision. If any of Your Subparticipants notify You of their decision to suspend exchange with a QHIN, Participant, or Subparticipant, You must notify Upstream QPS of such decision. You acknowledge that You may be required to engage in a process facilitated by the RCE to resolve whatever issues led to the decision to suspend. Provided that You selectively suspend exchanging with another QHIN, Participant, or Subparticipant in accordance with this section and in accordance with Applicable Law, such selective

suspension shall not be deemed a violation of Section 2.2 of these ToP.

11. Contract Administration.

- 11.1 **Authority to Agree.** You warrant and represent that You have the full power and authority to enter into these ToP.
- 11.2 **Assignment.** None of these ToP can be transferred by either Party, including whether by assignment, merger, other operation of law, change of control (i.e., sale of substantially all of the assets of the Party) of the Party or otherwise, without the prior written approval of the other Party.
- 11.3 **Severability.** If any provision of these ToP shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be struck from the ToP, and the remaining provisions of these ToP shall remain in full force and effect and enforceable.
- 11.4 **Captions.** Captions appearing in these ToP are for convenience only and shall not be deemed to explain, limit, or amplify the provisions of these ToP.
- 11.5 **Independent Parties.** Nothing contained in these ToP shall be deemed or construed as creating a joint venture or partnership between Upstream QPS and You.
- 11.6 **Acts of Contractors and Agents.** To the extent that the acts or omissions of a Party's agent(s) or contractor(s), or their subcontractor(s), result in that Party's breach of and liability under these ToP, said breach shall be deemed to be a breach by that Party.
- 11.7 **Waiver.** The failure of either Party to enforce, at any time, any provision of these ToP shall not be construed to be a waiver of such provision, nor shall it in any way affect the validity of these ToP or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of these ToP 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 these ToP operate as a waiver of any such right.
- 11.8 **Priority.** In the event of any conflict or inconsistency between any other agreement that You and Upstream QPS enter into with respect to TEFCA Exchange, Applicable Law, a provision of these ToP, the QTF, an SOP, and/or any implementation plans, guidance documents, or other materials or documentation the RCE makes available to QHINS, Participants, and/or Subparticipants regarding the operations or activities conducted under the Framework Agreements, the following shall be the order of

precedence for these ToP to the extent of such conflict or inconsistency: (1) Applicable Law; (2) these ToP; (3) the QTF; (4) the SOPs; (5) all other attachments, exhibits, and artifacts incorporated herein by reference; (6) other RCE plans, documents, or materials made available regarding activities conducted under the Framework Agreements; and (7) any other agreement that You and Upstream QPS enter into with respect to TEFCA Exchange.

11.9 Survival. The following sections of these ToP shall survive expiration or termination of these ToP as more specifically provided below:

- (i) Section 3, Confidentiality and Accountability shall survive for a period of six (6) years following the expiration or termination of these ToP.
- (ii) Section 6.4, Survival for IAS Providers, to the extent that You are an IAS Provider, shall survive following the expiration or termination of these ToP for the respective time periods set forth in Section 6.4.
- (iii) Section 7, Privacy, to the extent that You are subject to Section 7, said Section shall survive the expiration or termination of these ToP so long as the information maintained by You would be ePHI if maintained by a Covered Entity or Business Associate.
- (iv) Section 8.1 Security Controls, and Section 8.5, Encryption, to the extent that You are subject to Sections 8.1 and 8.5, said Section or Sections shall survive the expiration or termination of these ToP for so long as the information maintained by You would be ePHI if maintained by a Covered Entity or Business Associate regardless of whether You are a Covered Entity or Business Associate.
- (v) The requirements of Section 8.2, TEFCA Security Incidents Reporting, shall survive for a period of six (6) years following the expiration or termination of these ToP.

Business Associate Exhibit

BACKGROUND

- A. You ("Covered Entity") and Epic Nexus, Inc. ("Business Associate") have entered into an Epic QHIN Agreement (inclusive of this Exhibit, the "Agreement"), pursuant to which Covered Entity is a Participant in the Epic QHIN which is governed, overseen, facilitated and supported by Business Associate.
- B. Covered Entity possesses Protected Health Information that is protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), subtitle D of Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 ("HITECH") and the regulations promulgated thereunder by the United States Department of Health and Human Services, and is permitted to use or disclose such Protected Health Information only in accordance with HIPAA, HITECH and the Regulations.
- C. Business Associate may have access to and may receive Protected Health Information from Covered Entity in connection with its performance of services to Covered Entity.

TERMS

1. **Definitions.** All capitalized terms used but not otherwise defined in this Exhibit have the same meaning as those terms in the Regulations.
 - a. **Breach.** For purposes of Sections 2(d) and 2(k) of this Exhibit only, "Breach" has the meaning set forth in § 164.402 (including all of its subsections) of the Regulations; with respect to all other uses of the word "breach" in this Exhibit (e.g., section 4), the word has its ordinary contract meaning.
 - b. **Individual.** "Individual" has the same meaning as the term "individual" in § 160.103 of the Regulations and shall include a person who qualifies as a personal representative in accordance with § 164.502(g) of the Regulations.
 - c. **Protected Health Information.** "Protected Health Information" has the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - d. **Regulations.** "Regulations" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A, C, D and E, as in effect on the effective date of the Agreement.
 - e. **Required By Law.** "Required By Law" has the same meaning as the term "required by law" in § 164.103 of the Regulations.
 - f. **Secretary.** "Secretary" means the Secretary of the Department of Health and Human Services or his designee.
2. **Obligations and Activities of Business Associate.**
 - a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Exhibit, the Agreement, the Common Agreement or as Required By Law.
 - b. Business Associate agrees to use appropriate safeguards and comply, where applicable, with Subpart C of 45 CFR Part 164 of the Regulations with respect to electronic Protected Health Information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Exhibit or the Agreement.

- c. Business Associate agrees to mitigate, to the extent reasonably practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Exhibit.
- d. Business Associate agrees to report to Covered Entity any Security Incident respecting electronic Protected Health Information in Business Associate's possession or control, and any use or disclosure of the Protected Health Information not provided for by the Agreement (including Breaches of Unsecured Protected Health Information as provided in Section 2(k) below), of which Business Associate becomes aware. Notwithstanding the foregoing, this provision shall constitute notice of any unsuccessful Security Incident, including pings and other broadcast scans, unsuccessful log-on attempts, denial of service attacks and any combination thereof (provided such unsuccessful Security Incidents do not result in the unauthorized access, use or disclosure of PHI).
- e. Business Associate agrees to ensure that, in accordance with 45 CFR § 164.502(e)(1)(ii) and 45 CFR § 164.308(b)(2) of the Regulations, any subcontractors that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate agree to comply with the same or similar restrictions and conditions that apply to Business Associate with respect to such information.
- f. If Business Associate maintains Protected Health Information in a Designated Record Set for Covered Entity, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under § 164.524 of the Regulations.
- g. If Business Associate maintains Protected Health Information in a Designated Record Set for Covered Entity, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to § 164.526 of the Regulations at the request of Covered Entity or an Individual, and in the time and manner reasonably designated by Covered Entity.
- h. To the extent Business Associate is to carry out any of Covered Entity's obligations under Subpart E of 45 CFR 164 of the Regulations, Business Associate will comply with the requirements of Subpart E of 45 CFR 164 of the Regulations that apply to Covered Entity in the performance of such obligations.
- i. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner reasonably designated by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Regulations.
- j. Accounting of Disclosures.
 - 1. Business Associate agrees to document such disclosures by Business Associate of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with § 164.528 of the Regulations.
 - 2. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner reasonably designated by Covered Entity, information collected in accordance with Section 2(j)(1) of this Exhibit, to permit Covered Entity to respond to a request by

an Individual for an accounting of disclosures of Protected Health Information in accordance with § 164.528 of the Regulations.

k. Following Business Associate's discovery of a Breach of Unsecured Protected Health Information, Business Associate will notify Covered Entity of such Breach in accordance with §§ 164.410 and 164.412 of the Regulations.

l. Restriction against Sale of PHI. Business Associate will not sell PHI or receive any direct or indirect remuneration in exchange for PHI except as permitted by this Exhibit, the Agreement or federal law.

3. Permitted Uses and Disclosures by Business Associate.

a. Except as otherwise expressly limited in this Exhibit, Business Associate may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of, Covered Entity in connection with the Agreement, the Common Agreement, and any other agreements in effect between Covered Entity and Business Associate, including without limitation the provision of software implementation, maintenance and support services, provided that such use or disclosure would not violate the Regulations if done by Covered Entity.

b. Except as otherwise expressly limited in this Exhibit, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

c. Except as otherwise expressly limited in this Exhibit, Business Associate also may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if the disclosure is Required By Law, or if Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

d. Except as otherwise expressly limited in this Exhibit, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by § 164.504(e)(2)(i)(B) of the Regulations.

e. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1) of the Regulations.

4. Termination.

a. Termination for Cause.

1. By Covered Entity. Upon Covered Entity's knowledge of a material breach by Business Associate of this Exhibit, Covered Entity may:

A. Provide a reasonable opportunity for Business Associate to cure the material breach or end the material violation and if Business Associate does not cure the material breach or end the material violation within a reasonable time, Covered Entity may terminate this Exhibit and the provisions of the Agreement that require or permit Business Associate to access Protected Health Information; or

B. If Business Associate has breached a material term of this Exhibit and cure is not possible, immediately terminate this Exhibit and the provisions of the

Agreement that require or permit Business Associate to access Protected Health Information.

2. By Business Associate. Upon Business Associate's knowledge of a material breach by Covered Entity of this Exhibit, Business Associate may:
 - A. Provide a reasonable opportunity for Covered Entity to cure the material breach or end the material violation and if Covered Entity does not cure the material breach or end the material violation within a reasonable time, Business Associate may terminate this Exhibit and the Agreement; or
 - B. If Covered Entity has breached a material term of this Exhibit and cure is not possible, immediately terminate this Exhibit and the Agreement.

b. Effect of Termination.

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

5. **Miscellaneous.**

- a. Changes to Regulations. If the Regulations are amended in a manner that would alter the obligations of Business Associate as set forth in this Exhibit 5, then the parties agree in good faith to negotiate mutually acceptable changes to the terms set forth in this Exhibit 5.
- b. Survival. The respective rights and obligations of Business Associate under Section 4 of this Exhibit survive the termination of this Exhibit.
- c. Interpretation. Any ambiguity in this Exhibit shall be resolved to permit compliance with the Regulations.
- d. Unencrypted PHI. Covered Entity will not send unencrypted PHI to Business Associate in any form, including via email or on mobile devices such as USB drives. Should Covered Entity do so, Business Associate is not responsible for any damages arising out of or relating to unencrypted PHI that Covered Entity sends to Business Associate in any form.
- e. Application of Civil and Criminal Penalties. Business Associate acknowledges that pursuant to §§ 13401(b) and 13404(c) of HITECH:
 1. in the case Business Associate violates any security provision specified in § 13401(a) of HITECH, sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner such sections apply to a covered entity that violates such security provision; and

2. in the case Business Associate violates any provision of 13404(a) or 13404(b) of HITECH, the provisions of sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to the Business Associate with respect to such violation in the same manner as such provisions apply to a person who violates a provision of part C of title XI of such Act.