



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, <sup>TM</sup> or <sup>SM</sup>, 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](http://www.docuSign.com)), and any counterpart so delivered will be deemed to have been duly and validly delivered and valid and effective for all purposes.

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.

**[CUSTOMER]**

**EPIC NEXUS, INC.**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Notice Address:**

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