

ACUMEN EPIC CONNECT

EPIC PASS-THROUGH TERMS AND THIRD PARTY SOFTWARE AND DATA

The Software is powered by and incorporates computer programs (“Program Property”) provided by Epic Systems Corporation (“EPIC”), which includes certain third party software and data (“Third Party Software and Data”).

From time to time, Epic may require APS to pass through to its customers certain terms and conditions related to the Program Property and Third Party Software and Data, which are included in the following Addendums attached hereto:

Addendum	Epic Pass-Through Terms Addendum
Addendum	Care Everywhere Addendum
Addendum	Carequality Addendum
Addendum	InterSystems Addendum: Terms of Intersystems Sublicense
Addendum	SQL Addendum: Terms of KB Systems’ KB_SQL Sublicense
Addendum	Business Objects Addendum
Addendum	CPT Addendum
Addendum	Diagnostic Data Addendum
Addendum	BI-RADS® Atlas Addendum
Addendum	Illustration Addendum
Addendum	Miscellaneous Assessment Tool Collection Addendum
Addendum	Academy of Nutrition and Dietetics Addendum
Addendum	Cosmos Addendum
Addendum	QHIN Addendum

To the extent Third Party Software and Data is made available to APS customers, APS customers are granted a sublicense to use the Third Party Software and Data as limited by the applicable third party addendum.

For the purposes of the Addendums, the following capitalized terms have the meanings given to them below:

- i) “Code” means the object code and source code of the Program Property, including all Updates and other modifications to the Program Property, and all other object and source code provided by Epic to You.
- ii) “You” means the APS customer, whether defined as “Practice,” “Medical Group,” or otherwise in the parties’ underlying agreement.

Epic Pass-Through Terms Addendum

The following provisions apply to Your use of Epic Program Property:

1. **No-Offshore Use.** Unless otherwise agreed to by Epic in writing, neither You nor any of your end-users may access the Program Property from any location outside of the United States.

Care Everywhere Addendum

The following provisions apply to Your use of Care Everywhere to exchange patient information with Epic systems of other Epic customers who also license Care Everywhere (“Care Everywhere Customers” or “Care Epic Customers”) and to exchange basic continuity of care information meeting the supported form with non-Epic systems, except as otherwise noted below. For the sake of clarity, the subset of Care Everywhere functionality supporting such exchanges between Epic systems was previously referred to as “Care Epic” and the subset of Care Everywhere functionality supporting such exchanges between Epic and non-Epic systems was previously referred to as “Care Elsewhere.” References to Care Epic or Care Elsewhere in the Rules of the Road and Governing Council Procedures will be read in that context.

- 1. Termination.** You may at any time disconnect from the Care Everywhere Network (referred to in the Governing Council Procedures as the CE Network or Network) or from any specific connection with a non-Epic system (each, a “Non-Network Connection”), thereby discontinuing all communications with all other Care Everywhere Customers and all Non-Network Connections or with that Non-Network Connection, respectively, and You will inform Epic of such disconnection as soon as possible under the circumstances, but in no event more than one (1) business day thereafter.

- 2. Requirements.**
 - a. You agree to abide by the then-current “Rules of the Road,” which apply to the Care Everywhere Network. The current Rules of the Road are attached as Exhibit A to this Addendum and may be revised as provided in the Rules of the Road. Failure to comply with the Rules of the Road may result in Epic (or the Governing Council, as explained in Section 3) of this Addendum, taking appropriate action consistent with the policies and procedures of the Rules of the Road, and You agree to accept any determination made or action taken by Epic or the Governing Council pursuant to this Addendum or the Rules of the Road, as applicable, concerning violations of this Addendum or the Rules of the Road. As of the date of the Agreement, Epic includes language in each of its agreements with Care Everywhere Network customers that connect to the Care Everywhere Network that requires such customers to comply with the Rules of the Road.
 - b. If You use Care Everywhere, You agree that, except as provided in the Rules of the Road, You will not restrict any other Care Everywhere Customer who follows the above-mentioned Rules of the Road from obtaining any of the patient information available through Care Everywhere.
 - c. You may not make any modifications to any of the Code for Care Everywhere or to any Epic-released records related to Care Everywhere, which includes without limitation, restricting any other Care Everywhere Customer from obtaining any of the patient information available through Care Everywhere.
 - d. Use of Care Everywhere with a Non-Network Connection requires that You have enabled and are using the functionality that allows You to respond to Care Everywhere queries for patient information from other Care Everywhere Customers.
 - e. You understand it is Your responsibility (and not Epic’s) to determine and establish, along with each Non-Network Connection, under what circumstances, standards, and terms patient information will be exchanged with that Non-Network Connection. In addition, You agree to be responsible for compliance with all the laws applicable to You (including implementing HIPAA compliant privacy and security measures) regarding the use, disclosure, and exchange of patient information with Your Non-Network Connections. If, in the future, there is a network that permits a Non-Network Connection to connect to the Care Everywhere Network, then You understand that participation in such network would be subject to the then-current Rules of the Road and may require that You and the Non-Network Connection enter into a separate agreement with Epic.
 - f. You agree to implement security and access measures with respect to Your communication infrastructure for Care Everywhere, including access to the communication servers and the digital certificates used to validate You as a Care Everywhere Customer, that are HIPAA compliant. In addition, You understand that Care Everywhere includes certain privacy, security, and authorization configuration settings such as user privileges, restricted department, and authorization requirement settings, as well as other

configuration settings, that need to be configured based on Your workflows and implementation of the Program Property, and You agree to review the available configuration settings in the current and subsequent versions of Care Everywhere, determine the appropriate settings for Your use of Care Everywhere, and then configure and test Care Everywhere in Your system.

- 3. Indemnification Relating to Oversight Activities.** As of the date of this Addendum, the Care Everywhere Customers (with assistance from Epic) have created a Governing Council. The Governing Council, Epic, or both will help oversee the Care Everywhere Network (and to the extent applicable, individual Non-Network Connections) and compliance with this Addendum and the Rules of the Road, including without limitation validating users of Care Everywhere, recommending modifications to the Rules of the Road, determining violations of the Rules of the Road, and establishing appropriate remedies for such violations (such as limiting or removing a Care Everywhere Customer’s access to Care Everywhere) (collectively the “Oversight Activities”). The Governing Council may include representatives from Your organization as well as representatives from other Care Everywhere Customers as well as Epic. Epic would like to protect those customer representatives, their organizations, and Epic from liability for agreeing to help with the Oversight Activities. Therefore, to the extent permitted by the law applicable to You, You agree to hold harmless, indemnify, and defend the Governing Council (and to the extent Epic is providing any Oversight Activities, Epic), and each of their officers, employees, contractors, and agents (collectively the “Indemnitees”) from and against any Claim brought by You, Your End Users or Your Patients asserted against the Indemnitees or any of them, arising out of, or in any way connected with the Oversight Activities including without limitation claims based on an Indemnitees’ negligence arising out of or in any way connected with the Oversight Activities. In addition to the foregoing, the Governing Council may, at its discretion, obtain insurance or other indemnity coverage for the Governing Council’s conduct related to its Oversight Activities; however, the failure of the Governing Council to obtain such insurance or coverage will not affect the indemnification obligations of the preceding sentence. For purposes of this Section 3: (a) “Claim” means a claim, damage, liability, claim of loss, lawsuit, cause of action, or other claim and includes without limitation reasonable attorneys’ fees; (b) “Your End Users” means any individual or entity to whom You provide access to any Program Property if the Claim relates to any situation in which the individual or entity had or would have had access to the Program Property through You; and (c) “Your Patients” means any patient of You or Your End Users or any person making a claim as a result of financial or familial relationship with such patient, in each case if the Claim relates to any situation in which the patient was receiving or seeking medical care from You or Your End Users.
- 4. Authorization.** Although Care Everywhere may be configured to suppress some kinds of sensitive patient information in certain cases, the clinical information released by Care Everywhere may still unavoidably include sensitive information about a patient, including mental and behavioral health issues and treatment, developmental disabilities, sexually transmitted diseases, HIV, and alcohol or drug use, or information such as a medication name that would allow inferences to be made about treatment received by the patient.

In light of this, and because You are in the best position to know the laws applicable to You and Your existing authorization processes, You agree to release clinical information about a patient using Care Everywhere only if the patient has authorized such a release or You have determined that such a release for that patient is permitted without authorization under the law applicable to You. In addition, You agree that You will not release any information for a patient using Care Everywhere, and instead will use a different process to provide the information, if: (i) the patient has restricted the release of information that would otherwise be released by Care Everywhere; (ii) the patient has authorized the release of only a portion of the information that would otherwise be released by Care Everywhere; or (iii) the laws applicable to You restrict the release of any information that would otherwise be released by Care Everywhere and You do not otherwise obtain any required authorization for such release. You represent that You believe that any release authorization You use as a supplier of patient information complies with all the requirements of the laws applicable to You.

Exhibit A

Rules of the Road for the Care Everywhere Network

Care Everywhere enables Epic customers to exchange patient data with Epic systems of other Epic customers that also license Care Everywhere (“Care Everywhere Customers”), as well as with non-Epic systems. These Rules of the Road (including all appendices hereto, the “Rules”) are meant to establish the framework for exchanges between Care Everywhere Customers, including circumstances under which You may seek patient information from another Care Everywhere Customer.

For purposes of these Rules, the Care Everywhere Customer requesting patient information is the “Receiving Customer” and the Care Everywhere Customer providing the patient information is the “Sending Customer”, and each includes any organizations accessing and using Care Everywhere under a Care Everywhere Customer’s license to the Epic software.

For the sake of clarity, the subset of Care Everywhere functionality described above supporting exchanges of patient information between Epic systems was previously referred to as “Care Epic” and the subset of Care Everywhere functionality supporting exchanges between Epic and non-Epic systems was previously referred to as “Care Elsewhere.” References to Care Epic or Care Elsewhere in any agreements or amendments between You and Epic will be read in that context.

1. By making a request for a patient’s information using Care Everywhere, You warrant and represent to the Sending Customer that at the time You are making the request for the patient’s information You are providing treatment to that patient (which may include care coordination for that patient). You understand that You may not request patient information using Care Everywhere for any other purpose, including without limitation healthcare operations, research, marketing, or fundraising purposes. For purposes of these Rules, “treatment” will mean providing healthcare to a patient such that You may receive clinical information about that patient from another healthcare provider under the law applicable to You. For example, if You are in the United States, “treatment” will have the meaning assigned to it under HIPAA (see 45 CFR 164.501), which is currently defined as follows: “Treatment means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination of management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.”
2. Prior to completing Your request for a patient’s information using Care Everywhere, You will collect any additional required authorization from that patient using the authorization form, if any, that the Sending Customer may have supplied and made available in Care Everywhere. In addition, You represent that You believe that any release authorization You supply for use with Care Everywhere complies with all the requirements of the laws applicable to You as a Sending Customer.
3. If a Care Everywhere Customer requests a review of their patient records accessed by You using Care Everywhere, then to the extent such Care Everywhere Customer reasonably determines more information is required than is captured by the audit logs of Care Everywhere, You agree to fully cooperate with the review, including providing detailed information as to what information You accessed, who accessed it, and why it was accessed, and will provide the requested information (including copies of any authorization forms collected at the point of care) within five (5) business days of the request (or longer if mutually agreed by You and such other Care Everywhere Customer).
4. You agree to implement security and access measures with respect to providing access to Care Everywhere functionality that meet the minimum standards required by the law applicable to You (e.g. if You are in the United States, HIPAA) and, even if not otherwise required by law, the following minimum security and access measures:
 - a. training Care Everywhere end-users regarding the appropriate (and inappropriate) use of Care Everywhere;

- b. using individual logins and passwords for each user of the Care Everywhere functionality; You will not create any shared or public logins or passwords to access the Care Everywhere functionality;
 - c. using and regularly monitoring the audit capabilities of Care Everywhere;
 - d. requiring that all patient information obtained using Care Everywhere be treated as any of Your other clinical documentation/patient information; and
 - e. appointing one employee as Your Care Everywhere Coordinator who will act as Your liaison with other Care Everywhere Customers and Epic regarding Care Everywhere, and whose responsibilities will also include timely communication and deployment of information regarding Care Everywhere within Your organization.
5. You agree to implement security and access measures with respect to Your communication infrastructure for Care Everywhere, including access to the communication servers and the digital certificates used to validate You as a Care Everywhere Customer, that meet the minimum standards required by the law applicable to You (e.g. if You are in the United States, HIPAA). You further agree to keep the Care Everywhere “phonebook” and the information in it confidential. In addition, You understand that Care Everywhere includes certain privacy and security configuration settings such as user privileges and restricted department settings, as well as other configuration settings, that need to be configured based on Your workflows and implementation of the Program Property, and You agree to review the available configuration settings, determine the appropriate settings for Your use of Care Everywhere, and then configure and test Care Everywhere in Your system.
6. You agree that You will not restrict any other Care Everywhere Customer from obtaining any of the patient information available through Care Everywhere with the following exceptions:
- a. Information for any patient for whom patient authorization is required in Your system to provide information using Care Everywhere if the requesting Care Everywhere Customer has not certified that such authorization has been granted; or
 - b. Information for a patient that has not agreed to participate, or has requested to not participate, in the exchange of that patient’s information using Care Everywhere, if such agreement or request is required from each of Your patients prior to using Care Everywhere to exchange that patient’s information; or
 - c. Information for a patient marked by You in the system as having a specific status that is available in Care Everywhere (e.g. VIP patients) to restrict the transfer of information for patients having such status; or
 - d. Information that is requested by a Care Everywhere Customer that is located in a different country than You if You reasonably believe that fulfilling the request would cause You to violate the laws applicable to You regarding transfers of patient information. In such a circumstance, upon request, You will provide a reasonably detailed explanation of Your rejection to the requesting Care Everywhere Customer.
7. Care Everywhere Customers in Different Countries.
- a. If You request patient information from a Care Everywhere Customer that is located in a different country than You, the Sending Customer may undertake manual steps, such as matching of the patient’s demographic information in their system and review of the patient’s authorization form, before sending any patient information to You. Although each Care Everywhere Customer has agreed to undertake any manual steps in accordance with Section 7(b) of these Rules, You acknowledge that this often will not occur immediately. You further acknowledge that subsequent requests to the same Sending Customer regarding the same patient may require additional manual steps by the Sending Customer.

- b. If You receive a request for patient information from a Care Everywhere Customer that is located in a different country than You, and if You choose to undertake any manual steps before responding to the request, You agree that You will use good faith efforts to complete any manual steps in a prompt manner to facilitate the timely flow of data to other Care Everywhere Customers in accordance with Your obligations under these Rules of the Road, including without limitation Section 6 above.
8. Care Everywhere creates a community of users, all with the same goal of improving patient care by making additional patient information available to other providers. It is critical that all Care Everywhere Customers cooperate with each other regarding issues that may arise regarding use of Care Everywhere and work together to informally resolve issues. As such, it is not Epic's role to act as a policing authority to enforce these Rules. Instead, a governing council of elected volunteers will be created to oversee compliance by Care Everywhere Customers with the Rules of the Road (the "Governing Council") as provided in the Operating Procedures for the Care Everywhere Governing Council attached as Schedule 1 to these Rules of the Road. The Governing Council described in Schedule 1 is created in lieu of the Ombudsman Committee and any references in any agreements or amendments between You and Epic will mean the Governing Council.

In the event that You are unable to resolve a dispute that may arise between You and another Care Everywhere Customer, then You may submit Your grievance to the Governing Council, and the Governing Council will render a decision and impose any sanctions following the procedures described in Schedule 1 to these Rules of the Road.

In addition, during the pendency of the grievance process and notwithstanding anything contained in these Rules (or the agreement or amendment pursuant to which You license Care Everywhere) to the contrary, if You reasonably determine that the threat still exists based on the alleged violation of the Rules of the Road, then You may restrict the following individuals from making Care Everywhere requests to You (a "Temporary Restriction"): (i) the individual users involved the alleged violation or (ii) everyone making requests through that Care Everywhere Customer if it is not reasonably possible to identify or restrict those individual users or if the continued threat cannot be addressed by taking such action. You acknowledge that restricting an entire organization will result in disconnecting any active links between You and that Care Everywhere Customer and will likely result in errors related to this fact. At the conclusion of the grievance process, You will remove any Temporary Restrictions and will abide by the final decision of the Governing Council.

If You are named in a grievance, You agree to cooperate with any investigation conducted by the Governing Council. You agree to accept and comply with the Governing Council's decision unless You discontinue Your use of Care Everywhere until You do so comply. You also agree to permit Epic to modify the Care Everywhere related-configurations in Your system (e.g. the Epic-released records) to the extent necessary to carry out the decision of the Governing Council. You agree not to sue Epic, its officers, employees, contractors, or agents with respect to any action taken by Epic related to its carrying out of the decision of the Governing Council with respect to any grievance, including without limitation, Epic removing You or another Care Everywhere Customer from the Care Everywhere community or any harm to a patient because You or Your end users do not have access to the patient's information as a result of Epic's action or inaction.

You will use disciplinary procedures with respect to inappropriate use of Care Everywhere information in the same manner as You do for inappropriate use of Your own similar information.

9. You acknowledge and agree that any licensed Epic customer using Care Everywhere is a third party beneficiary of these Rules of the Road and shall have the right to enforce any violations of them in the same manner as if such Epic customer had a direct contract with You containing these Rules of the Road. Each Care Everywhere Customer's rights with respect to a violation of the Rules of the Road are not limited by any remedies provided in the Rules of the Road. This provision may not be modified by the Governing Council.
10. These Rules of the Road are expected to be continually refined. Changes to the Rules of the Road (including changes to the Operating Procedures in Schedule 1) may be proposed by Epic or the Governing Council from time to time and put to a vote of the Care Everywhere Customers (at an advisory committee, at UGM, or

otherwise). Epic, or the Governing Council, will inform the Care Everywhere Coordinator of each Care Everywhere Customer of the results of the vote, and if Epic and a majority of the Care Everywhere Customers approve a proposed change to the Rules of the Road, or if the number of Care Everywhere Customers specified in the Governing Council Operating Procedures as required for approval of an amendment approve a proposed amendment to the Governing Council Operating Procedures, then the Rules of the Road or Governing Council Operating Procedures, as applicable, will be amended to include the proposed changes and will apply automatically to all Care Everywhere Customers. Each Care Everywhere Coordinator will communicate the result and effect of the vote within the coordinator's organization. The updated Rules or Governing Council Operating Procedures will be posted on Epic's user web site for use of Care Everywhere and generally will be effective forty-five (45) days after the date of posting unless the change, in Epic's determination, is meant to address an issue of immediate concern.

11. Certain Care Everywhere Customers are governmental bodies (e.g. a military body or administrative subdivision) of sovereign nations and are prohibited from sharing patient information except in certain circumstances, i.e. where the recipient meets certain security requirements such as secret clearance, specific certifications, or adherence to certain federally government mandated standards (each such customer, a "Qualifying Government Customer"). Upon the request of a Qualifying Government Customer, Epic and the Governing Council will discuss whether it is appropriate to grant the Qualifying Government Customer an exception to the requirements of these Rules of the Road, including without limitation Section 6. If by majority vote the Governing Council determines that exceptions are appropriate under the circumstances and Epic agrees, the Governing Council will document such exceptions (including any limitations on such exceptions) by announcement to the Care Everywhere Coordinator of each Care Everywhere Customer. If the Governing Council grants an exception to any requirements of the Rules of the Road to a Qualifying Government Customer, each Care Everywhere Customer may, in its discretion and by written notice to Epic, opt out of some or all data exchange with such Qualifying Government Customer. Exceptions may be revoked by majority vote of the Governing Council with Epic's agreement. Any such revocation will be announced to the Care Everywhere Coordinator of each Care Everywhere Customer. A list of Qualifying Government Customers who have received exceptions under this Section 11 will be posted on Epic's user web site for use of Care Everywhere. The terms of this Section 11 are not intended to limit or otherwise affect the process for cross-border data transfers described in Section 7.
12. Epic and Care Everywhere Customers place a high emphasis on maintaining privacy and security for exchanges that occur using Care Everywhere. It is possible that a security vulnerability could be identified that threatens the confidentiality, integrity, or availability of patient data exchanged using Care Everywhere. In emergency circumstances, where such a vulnerability exists and poses an imminent threat to the confidentiality, integrity, or availability of patient data exchanged using Care Everywhere, the Governing Council and Epic may take action to limit or suspend exchange for those Care Everywhere Customers affected by such vulnerability. Any such action will be designed to both (i) mitigate the risk to the confidentiality, integrity, and availability of patient data due to the security vulnerability, and (ii) permit as much patient data exchange as possible to continue occurring while such action is in effect. For example, a security vulnerability on a Care Everywhere Customer's communication servers may allow attackers to decrypt traffic to and from that communication server, compromising the confidentiality of protected health information across the Care Everywhere network. In this scenario, the Governing Council and Epic may take action to mitigate the effect of the vulnerability on the Care Everywhere network (e.g., removing the impacted Care Everywhere Customer from the Care Everywhere network until the security vulnerability is resolved).
13. In order to promote a collaborative interoperability community and to maximize the effectiveness of health information exchange, it is helpful for Care Everywhere Customers to better understand how their trading partners and other Care Everywhere Customers have configured Care Everywhere. This information can be used to compare and improve participant configuration settings at an institutional level or across regional trading partners. Accordingly, You agree to make information about your Care Everywhere configuration available to Epic and all other Care Everywhere Customers. You may choose to opt out of sharing some or all of Your Care Everywhere configuration information upon request to Epic. Epic will make available on the Epic UserWeb a list of the configuration information to be collected, as well as the collected information.

Schedule 1

Operating Procedures of the Care Everywhere Governing Council

These Operating Procedures of the Care Everywhere Governing Council (the “Operating Procedures”) were made and established by the healthcare organizations participating in the Care Everywhere Network on September 20, 2010, in order to form a Governing Council to assist in the oversight of the Care Everywhere Network.

Care Everywhere enables Epic customers to exchange patient data with Epic systems of other Epic customers that also license Care Everywhere (“Care Everywhere Customers”), as well as with non-Epic systems. The Governing Council and these Operating Procedures apply only to exchanges between Care Everywhere Customers.

For the sake of clarity, the subset of Care Everywhere functionality described above supporting exchanges of patient information between Epic systems was previously referred to as “Care Epic” and the subset of Care Everywhere functionality supporting exchanges between Epic and non-Epic systems was previously referred to as “Care Elsewhere.”

These Operating Procedures were amended effective October 2, 2012 to define the procedure by which a Participant may lodge a grievance against one or more other Participants.

1. Definitions

- a. “Appeal Panel” has the meaning provided in section 5.i.
- b. “Appeal Panel Chair” means the chair of an Appeal Panel.
- c. “Appeal Process” means the process for appealing dispositions of Grievances, as described in section 5 of these Operating Procedures.
- d. “Appellant” means a party that is appealing the decision of a Grievance Panel.
- e. “Appellee” means the non-appealing party to an appeal from the decision of a Grievance Panel.
- f. “Care Everywhere” or “CE” means the Care Everywhere software application licensed by Epic that enables Participants to exchange patient data with Epic systems of other Participants, as well as with non-Epic systems.
- g. “Care Everywhere Coordinator” has the meaning provided in the Rules of the Road.
- h. “CE Network” or “Network” means all Participants and their usage of CE.
- i. “Claimant” means the Participant filing a Grievance.
- j. “Council Chair” means the chair of the Governing Council.
- k. “Day” means a business day (excluding Saturdays, Sundays and federal holidays).
- l. “Epic” means Epic Systems Corporation.
- m. “Epic License Agreement” means the main or master license agreement with Epic pursuant to which the Epic software is licensed.
- n. “Governing Council” means the Care Everywhere Governing Council described in these Operating Procedures.
- o. “GP Chair” means the chair of a Grievance Panel.

- p. “Grievance” means a written complaint lodged with the Governing Council according to the Grievance Process by one Participant alleging a material violation of the Rules of the Road by one or more other Participants.
- q. “Grievance Panel” has the meaning provided in section 5.c.
- r. “Grievance Process” means the process for evaluation and adjudication of Grievances, as described in section 5 of these Operating Procedures.
- s. “Participant” means an Epic customer that has entered into an Epic License Agreement and is currently licensed to use CE under that Epic License Agreement.
- t. “Protected Health Information” or “PHI” will have the meaning set forth at 45 C.F.R. s.160.103 of the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of the Electronic Protected Health Information (45 C.F.R. Parts 160 and 164) promulgated by U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as in effect on the date set forth in section 2.a. of these Operating Procedures and as may be amended, modified, or renumbered.
- u. “Respondent” means each Participant that allegedly violated the Rules of the Road, as described in the Grievance filed by the Claimant.
- v. “Response” means a Respondent’s written response to a Grievance filed in accordance with section 5.d.
- w. “Rules of the Road” means the framework for the exchange of patient information between Participants on the Network, including circumstances under which Participants may seek patient information from another Participant, and with which all Participants have agreed to comply pursuant to their Epic License Agreement.

2. The Governing Council

- a. On September 20, 2010, the Participants together with Epic formed the Governing Council through the establishment of these Operating Procedures.
- b. Nothing in these Operating Procedures or the procedures set forth herein modifies or amends the Rules of the Road or any Epic License Agreement.

3. Purpose

- a. The Governing Council has the following purposes.
 - i. *Primary Purpose.* The primary purpose of the Governing Council is to oversee compliance by Participants with the Rules of the Road, including the adjudication of Grievances among Participants related to the Network. The process by which the Governing Council performs this adjudication is outlined in section 5 of these Operating Procedures.
 - ii. *Secondary Purposes.*
 - 1. The Governing Council may propose updates to the Rules of the Road for the consideration of all Participants, as described in the Rules of the Road. The Governing Council will forward all proposed changes to the Rules of the Road to Epic to be distributed to all Participants along with the Governing Council’s and Epic’s recommendation for each proposed rule change.
 - 2. The Governing Council may promote best practices among the Participants, including but not limited to making non-binding recommendations concerning audit processes, security practices, and user training approaches.

- b. The Governing Council will have no authority to:
 - i. Determine compliance with the Epic License Agreement or any other agreements related to the Participants.
 - ii. Allocate liability associated with violations of the Rules of the Road.
 - iii. Assess any monetary penalty or damages of any kind.

4. Membership and Officials

- a. *Voting Members.* The Governing Council shall have fifteen (15) voting members.
 - i. The voting members shall be elected by the Participants according to the following process:
 1. The Governing Council shall set dates for the opening and close of voting so that (a) the close of voting occurs at least fifteen (15) calendar days prior to the end of the term of office for Governing Council Members being replaced by the voting process and (b) the time period for Participants to submit their vote is at least five (5) but no more than fifteen (15) calendar days.
 2. Candidates for Governing Council membership may be nominated by any Participant through letter or electronic mail to the current Recorder of the Governing Council.
 - a. No more than ninety (90) calendar days and no less than seventy-five (75) calendar days prior to the end of the term of office for Governing Council members, the Recorder shall publish a call for nominations to all Participants and will accept nominations for a period of thirty (30) calendar days from the date the calls for nominations is published.
 - b. Each Participant may nominate at most one candidate. Any biographical or professional information included with the nomination is limited to no more than 500 words.
 - c. To be considered for election, a nominee must be an employee of the nominating Participant or of its affiliated contract provider group which is a primary part of the Participant's integrated care delivery system, and the Recorder will not include any nominated candidate in the election process who does not meet this requirement. If a nominee is no longer an employee of the nominating party or of its affiliated contract provider group which is a primary part of the Participant's integrated care delivery system, the nominating Participant will promptly notify the Recorder.
 - d. If the number of nominees received by the Recorder is less than the number required to fill the positions then up for election, the Governing Council will extend the nomination period described in section 4.a.i.2.a. for a period of ten (10) calendar days in order to solicit additional nominations.
 3. Following the close of the nomination period and at least ten (10) calendar days before the election, the Recorder will provide to the Care Everywhere Coordinator of each Participant (by electronic mail or other reasonable means) a list of the candidates for the election and the deadline for receipt of votes. Any biographical or professional information about the candidate that was provided by the nominating Participant under section 4.i.2.b. will be distributed along with the list.
 4. Each Participant shall have one (1) vote per open Governing Council position and can allocate at most one (1) vote to a particular candidate. Participants are encouraged to

use all votes but are not required to do so. Each Participant's vote will be submitted by its Care Everywhere Coordinator to the Recorder, via electronic format prior to end of the voting period.

5. At the end of the voting period as described in 4.a.i.1. the Recorder will report the results of the election to all Participants.
 - a. The specific votes of each Participant shall be kept confidential by the Recorder, who will report only the total number of votes for each candidate.
 - b. The open Governing Council seats will be filled by the eligible candidates with the most total votes—the first open seat being filled by the candidate with the most votes, the second open seat being filled by the candidate with the second most votes, and so on until all the open seats are filled.
 - c. If there is a tie impacting the outcome, a runoff vote, with one (1) vote per Participant, for each affected seat will be held over the five (5) Days immediately following the date the results are reported, with the results of the runoff reported to all members by the Recorder.
 6. Members elected according to the above-described process will serve for at most one (1) consecutive full term of three (3) years.
- b. *Non-Voting Members.* The Governing Council will have two (2) non-voting members appointed by Epic from among its employees or officers. These members are entitled to participate in any proceedings and deliberations of the Governing Council and assist any panels, but unless otherwise provided in these Operating Procedures, will not have a vote on the Governing Council.
 - c. *Governing Council Officials.* The Governing Council shall have a Chair and a Recorder.
 - i. At the first Governing Council meeting following the annual election of Governing Council members, the Governing Council will elect the Chair and a Recorder from among the voting Governing Council members by a majority vote by the voting Governing Council per office.
 - ii. Each official will serve for one (1) year, unless such official submits his or her resignation to the other Governing Council Members.
 1. An official may resign from office and continue serving as a Governing Council member.
 2. Nothing will prohibit a Governing Council member from being re-elected to either official position.
 - iii. If an office is vacant mid-term, the Governing Council will elect a new member as soon as reasonably practicable to hold the office for the remainder of the term of the vacated office.
 - iv. The Chair's duties will be:
 1. Convening and facilitating meetings of the full Governing Council.
 2. Organizing the formation of Grievance Panels and Appeal Panels as described in section 5.
 3. Organizing the formation of any additional panels that the Governing Council decides are necessary.
 - v. The Recorder's duties will be:

1. Administering the nomination and election of Governing Council members as described in section 4.a.i.
 2. Establishing and maintaining all records of all elections and actions of the Governing Council and the Panels, including minutes of any meetings. All discussions and records of the actions of the Governing Councils and Panels will be confidential and will be disclosed only to Participants, Governing Council Members, and Epic (except as further restricted in 5.i., below).
 3. Publishing approved minutes of the Governing Council's public proceedings to all Participants.
 4. Providing for the orderly transition of the Governing Council's records to the Recorder's successor.
- d. *Payment.* Governing Council members and officials will not be paid by the Governing Council or Epic.
- e. *Resignation.* A Governing Council member may submit his or her resignation from the Governing Council to the other Governing Council members at any time. If at any time a Governing Council member is no longer employed by the Participant that nominated him or her, then such Governing Council member is considered to have resigned effective immediately upon termination of employment. If the employer of a Governing Council Member changes due to a merger, acquisition or other type of affiliation (rather than a termination of the Member's employment) and the new employer is not currently represented on the Governing Council, then subject to the approval of the Governing Council, the Member may elect to continue serving on the Governing Council for the remaining duration of his or her term.
- f. *Vacancies.* If vacancies in the Governing Council lower its number of members below ten (10), and the next regularly scheduled election is more than nine (9) months away, a special election will be held (according to the process described in 4.a.i.) to fill each vacant position on the Governing Council. Each member elected through the special election will serve for the remainder of the term of the original member whose position is being filled by the special election.
- g. *Panels.* Upon a majority vote of the Governing Council members, the Governing Council may form panels to better serve the Governing Council's purpose as outlined in section 3 of these Operating Procedures. The only panels mandated by these Operating Procedures are those required under the Grievance Process and Appeal Process, described in section 5 of these Operating Procedures.
- h. *Standard of Conduct.* The Governing Council members shall perform their duties in good faith and with a view to the overall interests of the Network, with that degree of diligence, care, and skill that ordinarily prudent persons would exercise under similar circumstances in like positions.
- i. *Removal.* Any elected Governing Council member may be removed by an affirmative vote of two-thirds (2/3) of all Participants. The Governing Council shall establish written procedures of due process for such action.

5. Grievances

a. Grievances Generally

- i. Prior to filing a Grievance, Participants are encouraged to make reasonable efforts to resolve any dispute through informal discussions.
- ii. All written submissions and correspondence described in these rules shall be sent in PDF format via email to the party's email address maintained by Epic.

- iii. Parties to a Grievance are encouraged to conduct all Grievance process activities in an expeditious manner and within less than the maximum timeframes indicated below. Any time deadlines may be extended for good cause shown if needed in particular cases.
 - iv. No Protected Health Information shall be included in any materials submitted to or by a Grievance Panel or Appeal Panel. If needed for disposition of a Grievance, clinical information shall be fully de-identified or anonymized in any materials submitted to the Grievance Panel or Appeal Panel.
 - v. A diagram of the Grievance process flow is presented as Attachment A to this document.
 - vi. The Rules of the Road permit a Claimant to impose a “Temporary Restriction” as necessary during the pendency of the Grievance process. See Section 7 of the Rules of the Road for more information.
- b. *Submission of Grievance.* To initiate the Grievance Process, a Claimant submits a written Grievance to the Council Chair on the prescribed form (Attachment B), with a copy sent to the Respondent(s).
- c. *Formation of Grievance Panel.* Within five (5) Days of receipt, the Council Chair convenes a four-member panel, including one non-voting member (a “Grievance Panel”). If there are less than three (3) eligible voting members, additional members of the Grievance Panel will be selected as provided in section 5.m until there are three (3) voting members selected for the Grievance Panel. A chair of the Grievance Panel shall be selected by the members of the Grievance Panel, and shall continue as the chair of that Grievance Panel for a twelve-month period. Promptly upon appointment, each member of the Grievance Panel submits a statement to the Council Chair as to whether s/he has a conflict of interest with respect to any party to the Grievance (see section 5.m of these Operating Procedures). If so, the Council Chair appoints a replacement member.
- d. *Determination of Jurisdiction to Hear Grievance.* Within five (5) Days of appointment, the GP Chair reviews the Grievance to determine if it is properly within the jurisdiction of the Grievance Panel under the Rules of the Road. If so, the GP Chair sends a written acknowledgement to Claimant and Respondent, with a request for Respondent to submit a written Response to the Claimant and the Grievance Panel within fifteen (15) Days. If the Grievance is not properly reviewable by the Grievance Panel, the GP Chair sends a written notice to the Claimant. A decision not to review a Grievance may be appealed pursuant to sections 5.h, 5.i, 5.j, 5.k and 5.l below.
- e. *Review of Grievance.* Within ten (10) Days of receipt of the Response, the Grievance Panel reviews the Grievance and Response on the merits and determines if there is need for further fact-finding or if a hearing would otherwise be appropriate (e.g., to clarify any aspect of the grievance, allow the parties to address the Grievance Panel or discuss potential remedies or resolution of the grievance). If so, the Grievance Panel determines whether additional written submissions, other information and/or a hearing is required or appropriate. The GP Chair may conduct a conference call with the parties to clarify the need for fact-finding. The GP Chair issues a letter to the parties on whether additional fact-finding is required and:
- i. if a hearing will not be held, the letter specifies a process and schedule for gathering any required additional information or submissions by the parties or Epic, and for closing the record.
 - ii. if a hearing will be held, the letter specifies the time, place and manner for conducting the hearing (e.g., telephone conference), as well as a process and schedule for gathering any required additional information or submissions by the parties or Epic, and for closing the record.
- f. *Written Decision of Grievance Panel.* Within thirty (30) Days after closing of the record, the Grievance Panel issues a written decision summarizing the basis for the decision and the remedy or sanction(s) and corrective or remedial actions, if any, per section 5.o of the Operating Procedures. (Review standards and sanctions are included as Attachment C to this document.) A copy of all Grievance Panel decisions

shall be distributed to the members of the Governing Council. On an exceptional basis for sensitive matters, the names of the parties or other information may be redacted from such copies for good cause shown.

- g. *Report on Remedial Actions After Disposition of Grievance.* Within thirty (30) Days after receipt of the decision (or such other period(s) of time specified in the decision), the Claimant and Respondent will submit a joint report to the Grievance Panel and the Governing Council confirming whether the remedy, sanctions and corrective or remedial actions have been completed.
- h. *Reconsideration and/or Appeal of Decision.* Within fifteen (15) Days from receipt of a final decision issued by the Grievance Panel, a party may file a request for reconsideration by the Grievance Panel or a written appeal with the Chair of the Governing Council, with copies sent to all parties and the Grievance Panel. (If a request for reconsideration is filed, the date for filing an appeal is suspended until the Grievance Panel issues its written decision on the reconsideration request.) A request for reconsideration and an appeal shall include a complete statement of the basis on which review is sought. (A diagram of this Appeals process is presented as Attachment D to this document.) If a request for reconsideration is filed, the Grievance Panel will issue a written decision within ten (10) Days of receipt of the request.
- i. *Formation of Appeal Panel.* Within five (5) Days of receipt of an appeal, the Council Chair convenes a seven-member appeal panel composed of voting Governing Council members (an "Appeal Panel"). If there are less than seven (7) eligible voting members, additional members of the Appeal Panel will be selected as provided in section 5.m until there are seven (7) voting members selected for the Appeal Panel. A chair of the Appeal Panel shall be selected by the members of the Appeal Panel. Promptly upon appointment, each member of the Appeal Panel submits a statement to the Council Chair as to whether s/he has a conflict of interest with respect to any party to the Grievance (see section 5.m of the Operating Procedures). If so, the Council Chair shall appoint a replacement member. Within five (5) Days of appointment, the Appeal Panel Chair sends an acknowledgement notice to the Appellant and Appellee, with a request for a written response from the Appellee within fifteen (15) Days.
- j. *Review of Appeal.* Within ten (10) Days of receipt of the Appellee's response: the Appeal Panel determines if there is need to hold a hearing on the appeal or if it will decide the appeal based on the record compiled by the Grievance Panel and the appeal. The Appeal Panel Chair issues a letter to the parties on whether an appeal hearing will be held and:
 - i. if an appeal hearing will not be held, the letter specifies a process and schedule for gathering any required additional information and submissions by the parties or Epic, and for closing the record.
 - ii. if an appeal hearing will be held, the letter specifies the time, place and manner for conducting the hearing (e.g., telephone conference), as well as a process and schedule for gathering any required additional information and submissions by the parties or Epic, and for closing the record.
- k. *Written Decision of Appeal Panel.* The Appeal Panel issues a written decision within thirty (30) Days after closing of the record, summarizing the basis for the decision and remedies, if any, per section 5.o of the Operating Procedures. (Review standards and sanctions are included as Attachment C to this document.)
- l. *Report on Remedial Actions After Disposition of Appeal.* Within thirty (30) Days after receipt of the decision on appeal (or such other period(s) of time specified in the decision), the Appellant submits a report to the Appeal Panel and the Governing Council confirming whether the remedy, sanctions and corrective or remedial actions have been completed. A copy of all Grievance Panel decisions shall be distributed to the members of the Governing Council. On an exceptional basis for sensitive matters, the names of the parties or other information may be redacted from such copies for good cause shown.
- m. *Eligibility; Conflict of Interest.* A Governing Council member is eligible to serve on a Grievance Panel or an Appeal Panel with respect to a specific Grievance unless such member has a conflict of interest related to that Grievance, which includes but is not limited to, current or prior employment at a

Participant who is party to the Grievance, or the existence of a close business relationship between such Governing Council member's current organization and a Participant who is party to the Grievance. A Governing Council member with a conflict of interest will disclose the conflict and will not be eligible to serve on the Grievance Panel or Appeal Panel with respect to that Grievance. If there are insufficient eligible Governing Council members to select a Grievance Panel or Appeal Panel (whether due to conflicts of interest or otherwise), the remaining panel member(s) will be selected using the following methods, with Method 1 being used until no further members can be selected using such method, in which case the remaining panel member(s) will be selected using the Method 2:

- i. Method 1: A Participant will be randomly selected among those Participants currently live on CE (i.e. using CE in a production environment to exchange patient information) as a part of the Network and that do not have a representative on the Governing Council, the Grievance Panel, or Appeal Panel. The selected Participant will appoint an employee or official of that Participant to the Grievance Panel or Appeal Panel, as applicable, and such individual will be considered a temporary voting member of the Governing Council solely for the purpose of the applicable Grievance provided such individual does not have a conflict of interest as described in this section 5.m.
 - ii. Method 2: A Participant will be randomly selected among those Participants that are not currently live on CE as a part of the Network and that do not have a representative on the Governing Council, Grievance Panel, or Appeal Panel. The selected Participant will appoint an employee or official of that Participant to the Grievance Panel or Appeal Panel, as applicable, and such individual will be considered a temporary voting member of the Governing Council solely for the purpose of the applicable Grievance provided such individual does not have a conflict of interest as described in this section 5.m.
- n. *Compliance with Breach Notification Laws.* These Operating Procedures and the Grievance Process are not intended to modify any obligation a Participant, the Governing Council, Governing Council members, or Epic may have under any applicable laws, including any federal or state notification requirements. For purposes of clarity, participation by the Governing Council, Governing Council members, and Epic in the Grievance Process does not make such parties responsible for complying with any federal or state notification requirements unless otherwise required by applicable law.
 - o. *Sanctions.* If the Grievance Panel finds for the Claimant, the Grievance Panel may impose sanctions against a Respondent as further described in Attachment C to these Operating Procedures.
 - p. *Confidential Deliberations.* All deliberations and votes of the Grievance Panel and Appeal Panel are confidential and closed. A Claimant will not disclose any PHI as a part of any Grievance or appeal of a Grievance decision and will ensure that all PHI is redacted from any document submitted pursuant to such processes. All documents submitted related to a Grievance or appeal of a Grievance decision will be retained in the Governing Council's general records and maintained in confidence.

6. Meetings

- a. *Annual Meeting.* The Governing Council shall meet in person at least once per year, and it is expected that most Governing Council and panel business will be conducted by web or telephone conference. The Chair will be responsible for organizing and convening any in-person meetings. If a Governing Council member is unable to attend the annual in-person meeting, that member may designate and authorize a proxy to attend that meeting by notifying the Chair in writing of the designation and authorization. Any proxy must meet the requirements of section 4.a.i.2.c.
- b. *Quorum.*
 - i. Governing Council. At least ten (10) of the voting Governing Council members and one (1) non-voting member must be in attendance at an in-person meeting, web conference, or telephone conference to constitute a quorum of the Governing Council.

- ii. Panels. At least two-thirds (2/3) of the voting members of a Panel, but in no event less than three (3) voting members, together with one (1) non-voting member must be in attendance at an in-person meeting, web conference, or telephone conference to constitute a quorum of a Panel.
- c. *Voting on Actions or Recommendations*. Unless otherwise required by these Operating Procedures, (i) any act or recommendation of the Governing Council requires a majority vote of at least a quorum of the Governing Council and (ii) any act or recommendation of a Panel requires a majority vote of at least a quorum of the Panel.
- d. *Organization Meeting*. After an election, a meeting of the entire Governing Council (the “Organizational Meeting”), either in-person or via web or telephone conference, at the Governing Council’s discretion, will be held within twenty (20) Days of the close of the election. If the Chair’s office is vacant, the Governing Council members serving the second year of their terms shall appoint one of their number to organize the meeting. The Governing Council shall elect a Chair and Recorder for the new term at the Organizational Meeting as provided in section 4.c.
- e. *Annual Participant Meeting*. The Governing Council also shall, with Epic’s assistance, organize and facilitate an annual, in-person meeting of all Participants to discuss the state of the Network, proposed changes to the Rules of the Road or these Operating Procedures, requested enhancements to the application, and other topics as needed or requested. The annual meeting will take place at Epic’s annual User Group Meeting, unless the Governing Council agrees upon another date in accordance with the terms of these Operating Procedures and provides at least sixty (60) calendar days notice of such meeting to all Participants.

7. Initial Adoption of Operating Procedures and Amendments to Operating Procedures

- a. Adoption of these Operating Procedures require an affirmative vote of at least two-thirds (2/3) of all Participants.
- b. As provided in the Rules of the Road, Amendments to these Operating Procedures require an affirmative vote of Epic and a majority of Care Everywhere Customers. Amendments may be proposed by any Participant, by the Governing Council, or by Epic. The Governing Council, together with Epic, will review any comments or suggested revisions put forward by any of the Participants, and, together with Epic, will determine if the suggested revision will be put to a vote and will draft the final version of the amendment.

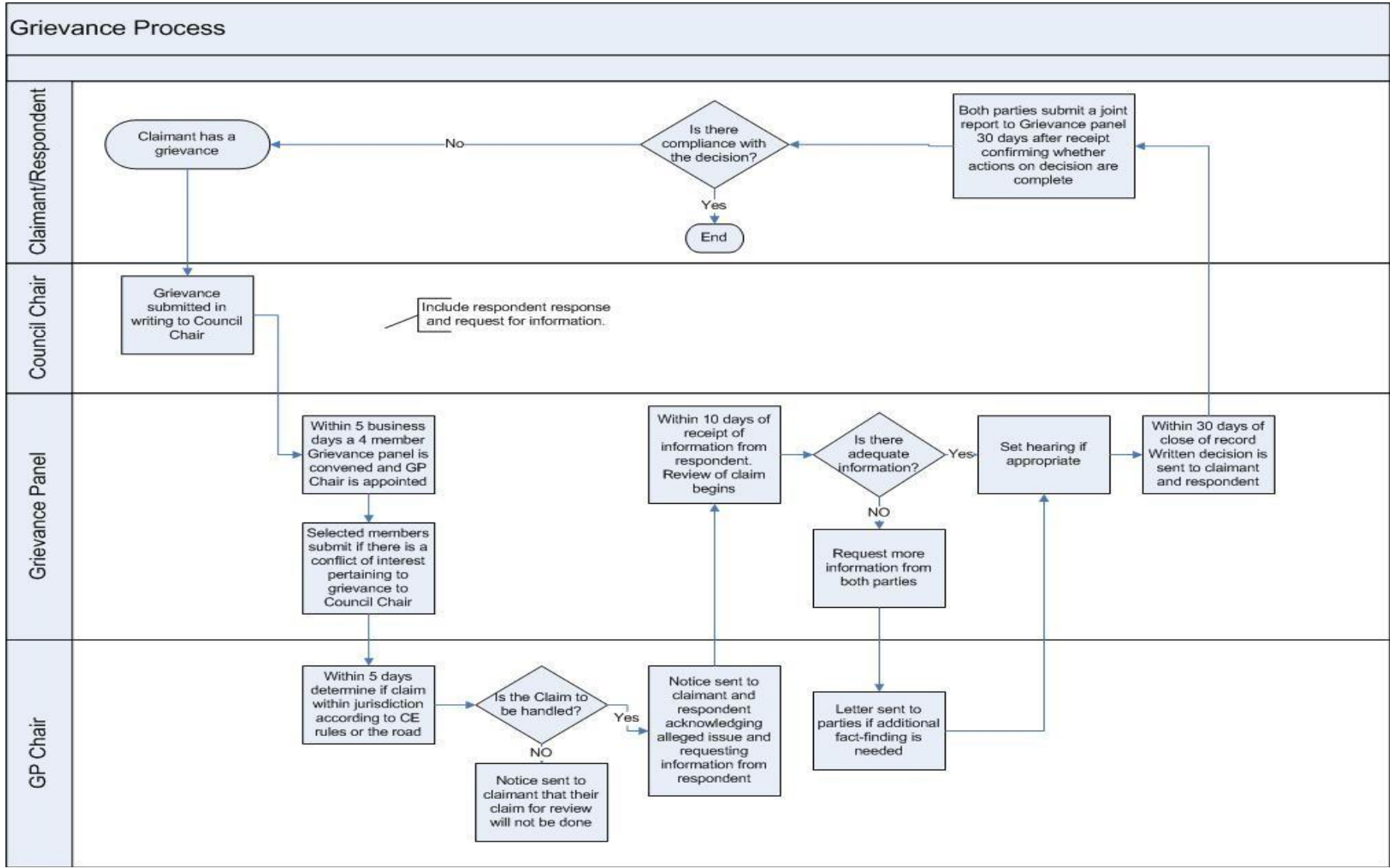
8. Governing Council Expenses.

Omitted

9. Termination

Once formed, dissolution of the Governing Council requires the affirmative vote of least two-thirds (2/3) of all Participants.

Attachment A
Care Everywhere Grievance Process Flow Diagram



Attachment B
Care Everywhere Grievance Claim Form

Date				
Claimant (Site filing grievance)				
Claimant's contact information	Last name		First name	
	Street		City	
	State		Zip	
Phone Number				
Email Address				
Rules of The Road process violated				
Date(s) of the violation				
Respondent (Site against whom grievance is filed)				
Other involved CE participants				
Description of violation				
	(Provide a complete summary. Additional supporting information maybe requested)			
Attempted Resolution				
Respondent's position/response				
Is Hearing requested?				
Desired Outcome/ Resolution	(what would you like to see happen, what is a good outcome)			
Attach Supporting Documentation	Any supporting screenshots or audits must have all PHI redacted			

Attachment C

Care Everywhere Review Standards and Sanctions

Summary of Recommendations (full explanation below)

- **Review Standards**
 - Grievance Panel – “Clear and convincing evidence” that the Respondent violated the Rules of the Road
 - Grievance Appeal Panel – “Clearly erroneous” finding by the Grievance Panel; “clear and convincing” standard if the Grievance Appeal Panel finds that clear error was made by Grievance Panel; “de novo” standard to review sanction determinations.
 - **Sanctions**
 - There are several options for sanctions, as listed in Governing Council Operating Procedures.
 - The Sanction(s) imposed should be determined in light of the facts and circumstances that gave rise to the violation, the Respondent’s course of conduct in response to the grievance (and similar problems) and the harms caused by the violation.
 - While some sanctions need only be approved by majority of a Grievance Panel or Grievance Appeal Panel, others will require additional or higher approval levels.
- A. **Review Standards** – In order to ensure consistency and fairness in the grievance process, the Grievance Panel and the Grievance Appeal Panel will apply the following standards in deciding grievances and appeals.
1. **Grievance Panel** – The Grievance Panel serves both as the finder of fact and (in some circumstances) as the body that determines the sanction (if any) that follows. Therefore, the Grievance Panel must first use a standard to determine whether the Claimant’s assertion is true (determination of a Rules of the Road violation) before it can impose any sanction. The standard to be used for determining whether a Rules of the Road violation occurred is:

Clear and convincing evidence: This means the panel finds that there either is sufficient uncontradicted evidence to support the claim or that the evidence supporting the claim substantially outweighs the evidence against the claim.
 2. **Grievance Appeal Panel** – Either the Claimant or the Respondent may appeal the Grievance Panel’s decisions with respect to either (or both) the finding of a Rules of the Road violation or the determination of sanctions. The standards of review to be used by the Grievance Appeal Panel are:
 - **Clearly erroneous** – This is the standard to be used by the Grievance Appeal Panel when determining whether the Grievance Panel’s **determination of a Rules of the Road violation** should stand. This standard requires the Grievance Appeal Panel to find that: (i) the Grievance Panel’s decision was based on a clearly erroneous finding of the underlying facts or a clearly erroneous interpretation or application of the Rules of the Road, and (ii) such error was material to the finding of violation (or no violation). The burden rests on the Appellant to identify for the Grievance Appeal Panel the specific facts or Rules the Appellant believes the Grievance Panel to have found (or applied) in error.
 - **Clear and convincing** (described above) – This is the standard to be used by the Grievance Appeal Panel when, following its finding that a clear error was made by the Grievance Panel, it will **review the entire record** to resolve the grievance.
 - **De Novo** – This is the standard to be used by the Grievance Appeal Panel when reviewing the **sanction imposed** by the Grievance Panel. This standard requires the Grievance Appeal Panel to make its own determination of what sanction is to be imposed (based on the factors listed below).
- B. **Sanctions** – Although the facts and circumstances giving rise to each grievance will be unique, the guidelines below are intended to promote fairness and consistency to the extent possible in sanction decisions as they are made over time in response to various grievances. When imposing sanctions, the Grievance Panel and Grievance Appeal Panel

should also keep in mind the paramount goals of promoting patient care and safety and trust in the operation of the Care Everywhere network among both CE Participants and they patients they serve. When imposing or recommending sanctions, the Grievance Panel (or Grievance Appeal Panel) will (1) consider **what sanctions** are available, (2) determine the appropriate sanction(s), based on the identified **factors** below, and (3) ensure that the correct **approval level** is obtained for the sanction that is being imposed or recommended.

1. Available Sanctions. There is a range of sanctions that can be imposed or recommended by the Grievance Panel (or Grievance Appeal Panel) following a finding that the Respondent violated the Rules of the Road. In general terms, there are three categories of sanctions:

- Restrictions on an individual end user’s use of Care Everywhere;
- Restrictions on a CE Participant’s use of or participation in Care Everywhere; and
- Sanctions that do not involve restricting a CE Participant’s or individual CE end user’s use of Care Everywhere, but nonetheless impose some other obligation or limitation on the Respondent.

Sanctions may be imposed separately or in combination with other sanctions. Sanctions may be, but are not required to be, applied progressively. Sanctions may be imposed as a temporary measure (i.e., for a certain period of time) or permanently. Specifically, available sanctions are:

	Restriction	Duration
Restrictions at the Individual End User Level	✓ May not request patient information from Claimant End user would continue to be able to <i>view</i> patient information retrieved from Claimant if requested by another end user in the institution or if previously requested by themselves.	✓ Temporary ✓ Permanent
	✓ May not request patient information from any CE Participant End user would continue to be able to <i>view</i> patient information retrieved from other CE Participants if requested by another end user in the institution or if previously requested by themselves.	✓ Temporary ✓ Permanent
	✓ May no longer view patient information from any CE Participant Access privileges to CE tab would be removed and end user would not be able to view any patient information retrieved via CE. <u>Note:</u> This restriction is <i>not recommended</i> due to patient care considerations.	✓ Temporary ✓ Permanent
Restrictions at the Institutional Level	✓ May not request patient information from Claimant Claimant would no longer appear in Respondent’s “address book.” Individual end users would continue to be able to <i>view</i> patient information previously retrieved from Claimant. Claimant (and other CE Participants) would continue to be able to request/retrieve patient information from the institution.	✓ Temporary ✓ Permanent
	✓ May not request patient information from any CE Participant Individual end users would continue to be able to <i>view</i> patient information previously retrieved from other CE Participants. Other CE Participants would continue to be able to request/retrieve patient information from the institution.	✓ Temporary ✓ Permanent
	✓ Removal from CE Network May no longer request/retrieve patient information from any CE Participant. Other CE Participants would no longer be able to request/retrieve patient information from the institution.	✓ Temporary ✓ Permanent

Other Restrictions or Sanctions	✓ Other reasonable restrictions or sanctions Must be consistent with the CE Rules of the Road and system capabilities.	✓ Temporary ✓ Permanent
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2. Factors in Determining Sanction(s). The Grievance Panel (or Grievance Appeal Panel) will take into account the factors listed below when determining which sanction(s) to apply. The presence of factors listed on the left will argue for a less severe or onerous sanction, while the presence of factors listed on the right will argue for a more severe or onerous sanction. It is expected that there will be a mix of “left” and “right” factors present in most grievances, in which case the more “right” factors that are present would result in a progressively more onerous sanctions (and vice versa).

Factors Weighing in Favor of Less Onerous Sanctions <i>Examples: Corrective action plan with monitoring; or temporary individual restrictions</i>	Factors Weighing in Favor of More Onerous Sanctions <i>Examples: temporary institutional restrictions; permanent individual or institutional restrictions</i>
Mistake, simple negligence, good faith	Gross misconduct, intentional, bad faith
Respondent had no prior actual or imputed knowledge of the problem	Respondent knew or should have known of the problem
If there was prior knowledge, Respondent took good faith steps to correct it	If the Respondent knew of the problem, it did not take good faith steps to correct it
No or minimal history of similar problems	History of similar problems in the institution and/or Respondent did not take reasonable actions to address them or comply with prior sanctions
Conduct not egregious or substantially outside the norm of local community practice	Conduct was illegal or for personal or organizational gain
Reasonable measures were in place to prevent this type of problem, even if those measures did not work in this case (e.g., training or monitoring)	Reasonable measures to prevent this type of problem were not in place
Behavior was caused by an individual, not the institution	Conduct resulted from institutional or systemic problems (such as lack of adequate training, poorly designed workflows, lack of cooperation with other users’ monitoring activities or failure to remedy prior violations)
Respondent cooperated in good faith with Complainant’s attempt to resolve/correct the concern	Respondent ignored or did not provide reasonable cooperation with Complainant’s attempt to resolve/correct the concern
It is reasonably likely that, given a less restrictive sanction, Respondent will be able to fix the problem	Unlikely that less onerous sanction would prevent similar problems in the future
No indication that issue has resulted in harm to the CareEverywhere network/functionality or in harm to the reputation of CareEverywhere participants	Conduct could result in harm to the CareEverywhere network/functionality or in harm to the reputation of CareEverywhere participants
No harm to Respondent or patient(s)	Harm to Respondent or patient(s)
Presence of other mitigating factors	Presence of other aggravating factors

3. Approval Level. Certain sanctions need only be approved by a simple majority of the Grievance Panel (or Grievance Appeal Panel) that has heard the grievance. However, due to the significant operational and patient care ramifications of certain types of sanctions, some sanctions will require a “higher” approval level, as indicated below.

Sanctions requiring a simple majority approval by Grievance Panel/Grievance Appeal Panel:

- a) Corrective action plan with self-monitoring

- b) Temporary restriction on one or more of Respondent's individual users from using CE to request patient information from Claimant

Sanctions requiring the unanimous approval by Grievance Panel/Grievance Appeal Panel:

- c) Temporary restriction on Respondent from using CE to request patient information from Claimant
- d) Permanent restriction on one or more of Respondent's individual users from using CE to request patient information from Claimant

Sanctions requiring a simple majority approval by full Governing Council

- e) Permanent restriction on Respondent from using CE to request patient information from Claimant
- f) Permanent restriction on one or more of Respondent's individual users from using CE to request patient information from any CE participant

Sanctions requiring a supermajority (75%) approval by full Governing Council

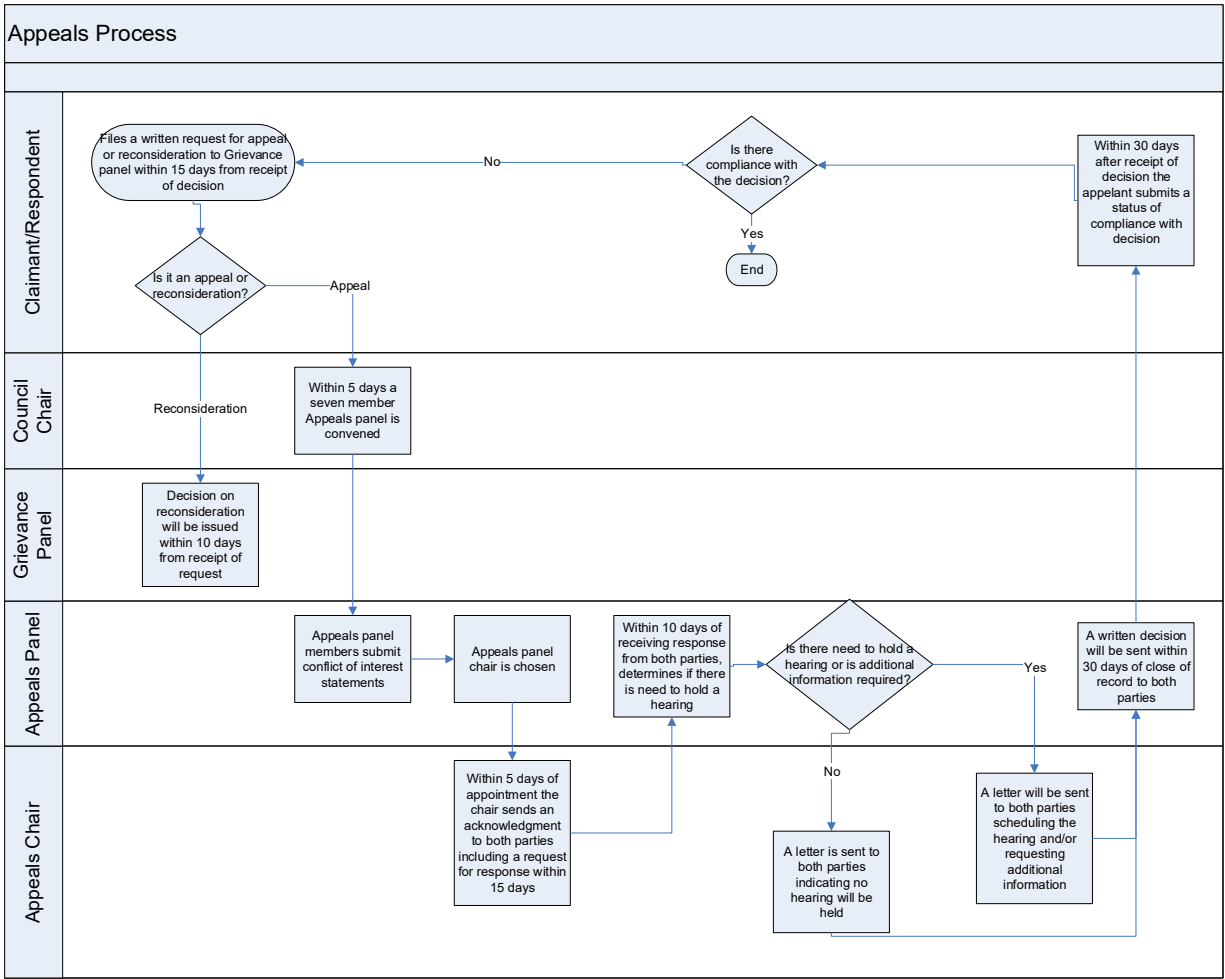
- g) Permanent restriction on Respondent from using CE to request patient information from any CE participant
- h) Temporary *removal* of Respondent from the CE Network
- i) Permanent *removal* of Respondent from the CE Network

Approval level to be determined by Grievance Panel when developing the proposed sanction

- j) Other reasonable restriction or sanction consistent with Rules of the Road

Attachment D

Care Everywhere Grievance Appeals Process Flow



Carequality Addendum

Epic's Care Everywhere application ("Care Everywhere") allows Epic customers to exchange patient data with other Epic customers that also license Care Everywhere and to exchange continuity of care information meeting the supported form with organizations that are not using Epic software. Epic has entered into an arrangement with Carequality that allows Care Everywhere users to exchange patient data with other participants in Carequality (each, a "Carequality Participant") using the Carequality framework. The following provisions apply to Your use of Care Everywhere – Carequality Exchange (the "Carequality Functionality") to enable such exchanges.

1. Termination. You may at any time disconnect from Carequality as provided in the Carequality Connection Terms. You will inform Epic of such disconnection as soon as possible under the circumstances, but in no event more than one (1) business day thereafter. Your termination of communications with other Carequality Participants will not affect Your use of other portions of Care Everywhere. However, termination of Your license to Care Everywhere will simultaneously terminate Your license to the Carequality Functionality.

2. Requirements.

- a. The terms of the Agreement that apply to Care Everywhere (e.g., terms regarding compliance with laws, patient consent, and security requirements, among others) also apply to Your use of the Carequality Functionality. However, the terms of this Addendum (including without limitation the Carequality Connection Terms) apply only to Your use of the Carequality Functionality and do not affect or modify any of the terms applicable to Your use of Care Everywhere generally. For purposes of clarity, any transfer of patient information between You and another Epic customer that occurs using Care Everywhere will be governed exclusively by the terms of the Agreement that apply to Care Everywhere (including without limitation the Care Everywhere Rules of the Road), even if the other Epic customer is also a Carequality Participant.
- b. Use of the Carequality Functionality requires that You have enabled the functionality that allows You to respond to Care Everywhere queries for patient information from other licensees of Care Everywhere.
- c. If Epic's agreement with Carequality is terminated, Epic will no longer have the right to permit You to use Care Everywhere – Carequality Exchange. Accordingly, Your license to Care Everywhere – Carequality Exchange will terminate automatically if Epic's agreement with Carequality is terminated, and Epic will inform You of such termination as soon as reasonably possible after it takes effect.
- d. You agree to abide by the then-current Carequality Connection Terms (the "Carequality Connection Terms"), which apply to use of the Carequality Functionality to exchange patient information with other Carequality Participants in Carequality. The current Carequality Connection Terms are attached as Exhibit 1 of this Addendum. The Carequality Connection Terms, as amended as provided in this Section 2(d), are made a part of the Agreement. The Carequality Connection Terms may be revised by Carequality from time to time. If revisions are made to the Carequality Connection Terms, Epic will inform You of such revisions at least thirty (30) days prior to the effective date of such revisions (which may include informing You via an email to Your organization's contact for Care Everywhere as specified pursuant to the Care Everywhere Rules of the Road). If You do not wish to abide by the Carequality Connection Terms as amended, You may inform Epic that You are terminating Your use of the Carequality Functionality at any time within thirty (30) days from the date Epic informed You of the amended Carequality Connection Terms. If You do not so inform Epic, then on the later of thirty (30) days from the date Epic informed You of the revised Carequality Connection Terms and the specified effective date of the revisions, the updated Carequality Connection Terms will automatically apply to You and govern Your use of the Carequality Functionality without any further action by You, Epic, or Carequality. (For the sake of clarity, the preceding sentence will not limit Section 1 above.) Failure to comply with the Carequality Connection Terms may result in Epic taking appropriate action consistent with the Carequality Connection Terms, and You agree to accept any action taken by Epic in good faith pursuant to this Addendum concerning violations of this Addendum or the Carequality Connection Terms.
- e. Section 11 of the Carequality Connection Terms contains provisions regarding Your obligation to inform Epic of "Adverse Security Events" (as that term is defined in the Carequality Connection Terms). Your designated contact point for delivering these notifications is Your assigned Care Everywhere Technical Services representative at Epic.

3. Escalation and Indemnification.

- a. Capitalized terms used in this Section 3 and not otherwise defined in the Agreement (including this Addendum) have the meanings given to them in the Carequality Connection Terms. Epic and You agree that Epic is the Sponsoring Implementer and You are a Carequality Connection. In the event that a Dispute arises between You and another Carequality Connection, You agree to follow the informal dispute resolution process set out in the Carequality Connection Terms. If such process does not result in a resolution of the Dispute, You may request that Epic further escalate the Dispute to the other Carequality Connection's Implementer. You agree to comply with the terms of any resolution that is arrived at as a result of the Dispute Resolution Process, and You agree that Epic may take appropriate action to carry out the terms of such a resolution to a Dispute.
- b. You acknowledge that Epic is a party to an agreement with Carequality pursuant to which Epic is required to take responsibility for the acts of its Carequality Connections and their End Users. Epic's willingness to enter into such agreement with Carequality is a prerequisite to Epic making the Carequality Functionality available to You. You further acknowledge that Epic has no ability to oversee or control Your use of the Carequality Functionality. Therefore, to the extent permitted by the law applicable to You, You agree to hold harmless, indemnify, and defend Epic and its officers, employees, contractors, and agents (collectively the "Indemnitees") from and against any Claim brought by any other Implementer, Carequality Connection, End User, or any of Your or their patients asserted against the Indemnitees or any of them, arising out of, or in any way connected with the use of the Carequality Functionality by You or Your End Users, including without limitation claims based on an Indemnitee's negligence except as set forth in the following sentence. This indemnification obligation will not apply to the extent that the proximate and direct cause of the event giving rise to the Claim for indemnification is Epic's sole negligence with respect to a Program Error in the Program Property and You and Your Personnel have, in connection with this Claim, operated the Program Property accurately, used the Program Property only in accordance with the Documentation Manuals, and satisfied each of the Customer Responsibilities (as such terms that are not defined in this Addendum are defined in the Agreement). For purposes of this Section 3(b) of this Addendum, "Claim" means a claim, damage, liability, claim of loss, lawsuit, cause of action, or other claim and includes without limitation, reasonable attorneys' fees. End User as used in this Section 3(b) is as defined in the Carequality Connection Terms.

Exhibit 1

Carequality® Connection Terms

As used herein, “Organization” refers to the Carequality Connection upon which these Carequality Connection Terms are binding and “Sponsoring Implementer” refers to the party that is imposing these Carequality Connection Terms on Organization. Organization and Sponsoring Implementer may be referred to in this Agreement as a “Party” or referred to collectively as “Parties.”

1. **Definitions:** As used herein, the following terms have the following meanings:

- 1.1. **Adverse Security Event:** The unauthorized acquisition, access, disclosure, or use of individually identifiable health information (as defined in the HIPAA Regulations) while such information is being transmitted between Implementers or Carequality Connections as specified by a Carequality Implementation Guide and pursuant to a valid CCA or Carequality Connection Terms, as applicable, but shall not include (i) any unauthorized acquisition, access, disclosure or use of encrypted data; (ii) any unintentional acquisition, access, disclosure, or use of health information if (I) such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment, or other professional relationship if not an employee, of an End User; and (II) such health information is not further acquired, accessed, disclosed or used by the End User; or (iii) any acquisition, access, disclosure or use of information that was not directly related to use of the Carequality Elements or this Agreement
- 1.2. **Applicable Law:** (i) If Organization is not a Federal agency, all applicable statutes and regulations of the State(s) or jurisdiction(s) in which Organization operates, as well as all applicable Federal statutes, and regulations; or (ii) if Organization is a Federal agency, all applicable Federal statutes, regulations, standards and policy requirements.
- 1.3. **Business Associate:** An organization that is defined as a “business associate” in 45 C.F.R. §160.103 of the HIPAA Regulations.
- 1.4. **Business Day(s):** Monday through Friday excluding federal or state holidays.
- 1.5. **Carequality Connection:** Any organization that appears in the Carequality Directory and is not an Implementer. Each Carequality Connection is allowed to be listed in the Carequality Directory by exactly one Implementer per Carequality Use Case. The Carequality Connection must be in a legally recognized business relationship with the Implementer that lists the Carequality Connection, although the details of such relationship may vary depending on the Implementer.
- 1.6. **Carequality Connection Terms:** An agreement between the Sponsoring Implementer and Organization which, at a minimum contains the terms set forth in this document.
- 1.7. **Carequality Directory:** A set of information that includes entries for all organizations who have been accepted as Carequality Implementers, along with those organizations’ Carequality Connections which serves as the definitive reference for identifying those organizations who are valid participants in exchange activities through the Carequality Elements, and for obtaining the information needed to establish technical connectivity with such organizations.
- 1.8. **Carequality Elements:** Those elements that have been adopted by Carequality to support widespread interoperability among Implementers including, but not limited to, the Carequality Connected Agreement, the Carequality Connection Terms, the Carequality Directory, Implementation Guides, and the Carequality Policies.
- 1.9. **Carequality Policies:** Those policies and procedures adopted by Carequality which are binding on Carequality, Implementers, Carequality Connections or all of them.
- 1.10. **Carequality Use Case:** A combination of a set of functional needs and a particular technical architecture for addressing those needs, for which the Carequality Steering Committee (“Steering Committee”) has adopted an Implementation Guide.
- 1.11. **Confidential Information:** Proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such upon disclosure or given the nature of the information or the

circumstances surrounding its disclosure, reasonably should be considered confidential. With respect to Carequality, Confidential Information also includes those components of the Carequality Elements that the Carequality Steering Committee determines should be labeled Confidential. Notwithstanding any label to the contrary, Confidential Information does not include any Contribution (even if included in a Carequality Element); any information which is or becomes known publicly through no fault of a Recipient; is learned of by a Recipient from a third party entitled to disclose it; is already known to a Recipient before receipt from a Discloser as documented by the Recipient's written records; or, is independently developed by Recipient without reference to, reliance on, or use of, Discloser's Confidential Information.

- 1.12. Contribution: Any submission by a Discloser to Carequality intended by the Discloser to be considered for inclusion in any of the Carequality Elements, including comments submitted on any media, oral discussions at meetings of any work group, committee or sub-committee or other types of submissions.
- 1.13. Covered Entity: An organization that is defined as a "covered entity" in 45 C.F.R. §160.103 of the HIPAA Regulations.
- 1.14. Discloser: The Party that discloses Confidential Information to a Recipient.
- 1.15. Dispute: Any controversy, dispute, or disagreement arising out of or relating to the interpretation or implementation of the Carequality Elements.
- 1.16. End User: An individual or program generating a request for information, responding to a request for information, publishing information to a list of recipients or receiving published information through the Carequality Elements.
- 1.17. Exchange Activity: Any use of the capability provided or supported by the Carequality Elements to exchange information among Implementers or their Carequality Connection.
- 1.18. Governmental Entity: A local, state or Federal agency.
- 1.19. HIPAA Regulations: The Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as in effect on the Effective Date of this Agreement and as may be amended, modified, or renumbered.
- 1.20. Implementation Guide: A guide adopted by Carequality that sets forth the technical specifications and additional business rules that apply to Implementers and Carequality Connections who declare support for a specific Carequality Use Case. Additional business rules will include, but not be limited to, permitted purposes for the Carequality Use Case, roles associated with the Carequality Use Case and specifications on compliance with Section 8 of this Agreement ("Non-Discrimination").
- 1.21. Implementer: An organization that has signed the Carequality Connected Agreement and been accepted as such by Carequality.
- 1.22. Organization Business Rule: A data sharing restriction that Organization has adopted for itself and its End Users. An Organization Business Rule may only be based on a policy decision that Organization has made with respect to the handling of patient data identified as clinically or legally sensitive, or to the consent or authorization that is required to share data with other Implementers and Carequality Connections. It is not necessary that the Organization Business Rule be required by Applicable Law or be based on Applicable Law.
- 1.23. Recipient: The Party that receives Confidential Information from a Discloser.
- 1.24. Sponsoring Implementer: The Party that has signed the CCA and agreed to comply with its terms as a Carequality Implementer. This term is used to distinguish the specific organization that is a Party to this Agreement from other Implementers, and applies to that Party both during the period in which it is seeking to attain Implementer status, and after it is accepted as an Implementer.
- 1.25. Sponsoring Implementer Business Rule: A data sharing restriction that Sponsoring Implementer has adopted for itself and its customers, participants or other constituent entities. A Sponsoring Implementer

Business Rule may only be based on a policy decision that Sponsoring Implementer has made with respect to the handling of patient data identified as clinically or legally sensitive, or to the consent or authorization that is required to share data with other Implementers and Carequality Connections. It is not necessary that the Sponsoring Implementer Business Rule be required by Applicable Law or be based on Applicable Law.

2. **Recognition of Organization as Carequality Connection.** Upon Sponsoring Implementer determining to its satisfaction that Organization has met the requirements to be a Carequality Connection, and Sponsoring Implementer's inclusion of Organization in the Carequality Directory, Organization shall be recognized as a Carequality Connection, subject to all obligations, terms and conditions contained herein and entitled to all rights and benefits conferred upon Carequality Connections including, but not limited to, inclusion in the Carequality Directory.
3. **Suspension and Termination.**
 - 3.1. **Suspension.** Sponsoring Implementer or Carequality may suspend Organization's ability to participate in any exchange activity under the Carequality Connection Terms in the event that Sponsoring Implementer or Carequality determines, following completion of a preliminary investigation, that (i) Organization has breached a material provision of these Carequality Connection Terms and failed to cure such breach within fifteen (15) days or such other period of time that the Parties have agreed to, of receiving notice of same; or (ii) there is a substantial likelihood that Organization's acts or omissions create an immediate threat or will cause irreparable harm to another Party, an Implementer, Carequality Connection, End User or individual (collectively, a "Threat Condition"). Organization may provide notice to Sponsoring Implementer that it wishes to temporarily remove itself from the Carequality Directory in the event that Organization or any of Organization's End Users cannot comply with these Carequality Connection Terms.
 - 3.2. **Termination.** Sponsoring Implementer may terminate Organization's status as a Carequality Connection with immediate effect by giving notice to Organization if: (i) Organization is in material breach of any of these Carequality Connection Terms and fails to remedy such breach within 30 days after receiving notice of such breach; or (ii) Organization breaches a material provision of these Carequality Connection Terms where such breach is not capable of remedy. Subject to the terms of any agreement between Organization and Sponsoring Implementer, Organization may voluntarily terminate its status as a Carequality Connection at any time by providing written notice to Sponsoring Implementer and to Carequality at least 60 prior to the effective date of the termination. The notice shall indicate the reason(s) for Organization deciding to terminate its status as a Carequality Connection.
4. **Legal Requirements.** Organization shall, at all times, fully comply with all Applicable Law relating to these Carequality Connection Terms and the use of the Carequality Elements. To further support the privacy, confidentiality, and security of health information exchanged pursuant to these Carequality Connection Terms, Organization agrees that when acting as a Carequality Connection, it will comply with the provisions of the HIPAA Regulations that are applicable to Business Associates as a minimum contractual standard of conduct even if Organization is not a Covered Entity, a Business Associate, or a Governmental Entity.
5. **Compliance with the Implementation Guides and Carequality Policies.** Organization shall implement and maintain support of at least one Carequality Use Case and shall indicate to Sponsoring Implementer the Organization's role in such Carequality Use Case ("Carequality Use Case Role"). For all Carequality Use Cases supported by Organization, Organization shall comply with all components (unless such components are designated as optional) set forth in the applicable Implementation Guide that apply to (i) the Organization's Carequality Use Case Role or (ii) all Carequality Connections. Organization is encouraged, but not required, to comply with all optional components of the applicable Implementation Guide(s). Organization also agrees that, if it is not in compliance with all applicable components of the Implementation Guide(s) and all Carequality Policies applicable to Carequality Connections, Sponsoring Implementer may exercise its right to suspend Organization in accordance with Section 3.1.
6. **Non-Discrimination.** With respect to Implementers and Implementers' Carequality Connections that have implemented the same Carequality Use Case as Organization and Organization's End Users, neither Organization nor its End Users shall unfairly or unreasonably limit exchange or interoperability with such Implementers or their Carequality Connections. Each Carequality Use Case's Implementation Guide will provide specific requirements for compliance with this requirement in the context of that Carequality Use Case.
7. **Organization Autonomy.** To the extent that Organization has adopted Organization Business Rules, Organization is permitted to continue acting in accordance with such Organization Business Rules, even if they restrict Organization's ability to support exchange of information with other Implementers or Carequality Connections or to meet the

requirements of Section 6 above, provided that Organization applies such Organization Business Rules consistently with respect to other Implementers and Carequality Connections and the Organization Business Rules do not impose conditions that would unfairly or unreasonably limit interoperability.

8. ***Accountability.***

- 8.1. **Organization Accountability.** Organization shall be responsible for any harm to Carequality, its Sponsoring Implementer, other Carequality Connections of its Sponsoring Implementer, other Implementers and their Carequality Connections which harm is caused by Organization's, or its End Users, acts and omissions. Organization shall not be responsible for the acts or omissions of any Implementer or other Carequality Connection. Notwithstanding any provision in this Agreement to the contrary, Organization 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. **Carequality Accountability.** Organization will not hold Carequality, or anyone acting on its behalf, including but not limited to members of the Steering Committee, Advisory Council, Dispute Resolution Panel or any work group, or subcommittee, of any of these or Carequality's contractors, employees or agents liable for any damages, losses, liabilities or injuries arising from or related to these Carequality Connection Terms. This section shall not be construed as an indemnification provision.
- 8.3. **Limitation on Liability.** Notwithstanding anything in this Agreement to the contrary, in no event shall Carequality's, Sponsoring Implementer's or Organization's total liability to each other and all third party beneficiaries arising from or relating to these Carequality Connection Terms exceed an aggregate amount equal to three million dollars (\$3,000,000), 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.

9. ***Dispute Resolution.***

- 9.1. Organization acknowledges that it may be in its best interest to resolve Disputes between or among Organization, or its End Users, and Carequality, other Implementers or their Carequality Connections through a collaborative, collegial process rather than through civil litigation. Organization has reached this conclusion based upon the fact that the legal and factual issues involved in these Carequality Connection Terms are unique, novel, and complex and limited case law exists which addresses the legal issues that could arise from this Agreement. Organization acknowledges that Carequality has adopted a Dispute Resolution Process which Organization agrees to follow. Further, Organization agrees to use its best efforts to resolve Disputes with Carequality, other Carequality Connections and their Implementers or with another Implementer directly if the Dispute does not involve another Implementers' Carequality Connections, through discussions with those involved in such Dispute before even submitting the Dispute to its Implementer pursuant to the Dispute Resolution Process. If Organization requires assistance in identifying contact information for another Carequality Connection, or an Implementer, it shall seek that assistance from Sponsoring Implementer.
- 9.2. If, despite using its best efforts, Organization cannot resolve any Dispute through discussions with the other parties involved, then Organization will notify the Sponsoring Implementer of the Dispute and request that the Implementer initiate the Dispute Resolution Process. Organization is required to undertake these efforts in the event of a Dispute before seeking any other recourse.
- 9.3. Notwithstanding the above, Organization may be relieved of its obligation to participate in the Dispute Resolution Process if Organization (i) believes that another Implementer's or Carequality Connection's act or omission will cause irreparable harm to Organization or another organization or individual (e.g. Implementer, Carequality Connection, End User or consumer) and (ii) pursues immediate injunctive relief against such Implementer or Carequality Connection in a court of competent jurisdiction. Organization must inform its Sponsoring Implementer of such action within two business days of filing for the injunctive relief and of the result of the action within 24 hours of learning of same. If the injunctive relief sought is not granted and Organization chooses to pursue the Dispute, the Dispute must be submitted to the Organizations' Sponsoring Implementer in accordance with the Dispute Resolution Process so that the Sponsoring Implementer can determine next steps.

10. ***Cooperation.*** Organization understands and acknowledges that numerous activities with respect to Carequality shall likely involve its Sponsoring Implementer, other Implementers and their Carequality Connections, employees,

agents, and third party contractors, vendors, or consultants. To the extent not legally prohibited, Organization shall: (a) respond in a timely manner to inquiries from Carequality, its Sponsoring Implementer, other Implementers or their Carequality Connections about possible issues related to the Carequality Use Case(s) in which Organization is involved; (b) collaboratively participate in discussions coordinated by Carequality to address differing interpretations of requirements set forth in an applicable Implementation Guide(s) prior to pursuing the Dispute Resolution Process; (c) make reasonable efforts to notify its Sponsoring Implementer when persistent and widespread connectivity failures are occurring with its Sponsoring Implementer or with other Implementers or their Carequality Connections, so that all those affected can investigate the problems and identify the root cause(s) of the connectivity failures; (d) work cooperatively, including without limitation facilitating contact with other Implementers or their Carequality Connections, to address the root cause(s) of persistent and widespread connectivity failures; (e) subject to Organization's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting Organization's confidential information, provide reasonable information to others in support of collaborative efforts to resolve issues or Disputes; (f) provide information and other relevant assistance to Sponsoring Implementer in connection with this Section 10; and (g) subject to Organization's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable litigation or protecting Organization's Confidential Information, provide reasonable information to aid the efforts of Organization's Sponsoring Implementer, other Implementers or their Carequality Connections to understand, contain, and mitigate an Adverse Security Event, at the request of such Implementer or Carequality Connection. In no case shall Organization be required to disclose individually identifiable health information in violation of Applicable Law. In seeking another's cooperation, Organization shall make all reasonable efforts to accommodate the other's schedules and reasonable operational concerns.

11. ***Adverse Security Event Reporting.***

11.1. As soon as reasonably practicable, but no later than five (5) business days after determining that an Adverse Security Event has occurred and is likely to have an adverse impact on an Implementer(s) or Carequality Connection(s), Organization shall provide Sponsoring Implementer with notification of the Event through the notification protocol specified by Sponsoring Implementer. The notification should include sufficient information for Sponsoring Implementer to understand the nature of the Adverse Security Event and identify other Implementers or Carequality Connections that may be impacted by the Adverse Security Event. Notwithstanding the foregoing, Organization agrees that (a) within one (1) hour of learning that an Adverse Security Event occurred and that such Event may involve an Implementer or Carequality Connection that is a Federal agency, it shall alert the Federal agency in accordance with the procedures and contacts provided by such Federal agency, and (b) that within twenty-four (24) hours after determining that an Adverse Security Event has occurred and is likely to have an adverse impact on an Implementer(s) or Carequality Connection(s) that is a Federal agency, Organization shall provide a notification to the Federal agency in accordance with the procedures and contacts provided by such Federal agency, and Organization shall copy Sponsoring Implementer and Carequality on any such notification.

11.2. This Section 11 shall not be deemed to supersede Organization's obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law. Compliance with this Section 11 shall not relieve Organization of any other security incident or breach reporting requirements under Applicable Law including, but not limited to, those related to consumers.

12. ***Acceptable Use.*** Carequality has adopted permitted purposes for the use of the Carequality Elements that are specifically set out in the Implementation Guide for each Carequality Use Case. Organization shall only engage in exchange activities through the Carequality Elements for permitted purposes as defined in the Implementation Guides. If Organization does not comply with these permitted purposes or other applicable provisions in the Implementation Guide, Carequality may exercise its right to suspend Organization in accordance with Section 3 of these Carequality Connection Terms. If Organization is not a Covered Entity or Governmental entity, then (i) Organization may only use the interoperability available through Carequality to transmit or receive information on behalf of its End Users and not on its own behalf; and (ii) Organization will not re-use, re-disclose, aggregate, de-identify or sell any information transacted by its End Users for its own benefit unless its respective Carequality Connections or End Users have given Organization the explicit written authority to do so.

13. ***Confidentiality.*** Organization agrees to use any Confidential Information that it obtains solely for the purpose of performing its obligations under the Carequality Connection Terms, and for no other purpose. Organization will disclose the Confidential Information it receives only to its employees and agents who require such knowledge and use in the ordinary course and scope of their employment or retention, and are obligated to protect the confidentiality of such Confidential Information. In the event Organization has any question about whether

information and/or materials it receives is Confidential Information, it shall treat the same as if it were Confidential Information. For the avoidance of doubt, the Carequality Elements that are not labeled as Confidential Information by the Carequality Steering Committee are not confidential and are not covered by the provisions of this section.

14. **Contributions; IP Rights; Ownership of Materials; License.** Organization acknowledges that any copyrights, patent rights, trade secrets, trademarks, service marks, trade dress, and other intellectual property in or related to Carequality including, but not limited to, these Carequality Connection Terms, Implementation Guides, Carequality Elements, Carequality Policies, related materials, information, reports, processes (the “Carequality IP”), are protected under applicable United States law. Recognizing that the Carequality IP is the work product of the membership of Carequality, and that Carequality is the collective representative of all Implementers’ interests, these intellectual property rights are asserted and held by Carequality in its capacity as the representative of its total membership and licensed to Organization hereunder. This does not apply to Carequality trademarks, service marks or trade dress rights, which are discussed separately below. Organization is encouraged to provide Contributions to Carequality and understands that Carequality must obtain certain rights in such Contributions in order to include the Contribution in Carequality IP.
 - 14.1. With respect to each Contribution, Organization represents that: (a) no information in the Contribution is confidential; (b) Carequality 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.
 - 14.2. To the extent that a Contribution or any portion thereof is protected by copyright or other rights of authorship, Organization grants a perpetual, irrevocable, non-exclusive, royalty-free, world-wide, sublicensable right and license to Carequality 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 Carequality IP. Organization also grants Carequality the right: (a) to register copyright in Carequality’s name any Carequality IP even though it may include Contributions; and (b) to permit others, at Carequality’s sole discretion, to reproduce in whole or in part the resulting Carequality IP.
 - 14.3. Organization shall identify to Carequality, through the issuance of a letter of assurance, any patents or patent applications which Organization believes may be applicable to any Carequality Element specifically including, but not limited to, any Implementation Guide. 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 Carequality Element relevant to any person or entity using the patent(s) to comply with such Carequality Element.
 - 14.4. Sponsoring Implementer grants to Organization a perpetual, irrevocable, non-exclusive, royalty-free, world-wide, right and license to use, the Carequality IP for the purpose of enhancing interoperability (including through the modification of its products and services to implement the Carequality Use Cases and conform to the Implementation Guides) Organization and its End Users have and will continue to possess the usage rights to the Carequality IP as authorized by this Agreement and the Carequality Connection Terms. Organization retains ownership of any Contribution it provides, granting only the licenses described in this Section. Nothing shall prevent Organization from (i) changing Organization’s technology, services or any Contribution in any way, including to conform to the requirements of an Implementation Guide or (ii) making any change available to any other person or entity. Notwithstanding anything to the contrary in the Carequality Connection Terms, all right, title, and interest in any change to Organization’s technology, services or any Contribution will accrue to the benefit of, and be owned exclusively by, Organization.
 - 14.5. The trademarks, services marks, trade dress, business names, company names, and logos owned by Carequality, including without limitation CAREQUALITY and all Carequality logos, (collectively, the “Carequality Marks”) are an important part of maintaining the strength and reputation of Carequality and its efforts to enable the interoperable exchange of healthcare information. Organization may not use the Carequality Marks to brand any of Organization’s products or services and may not incorporate any Carequality Marks in any of Organization’s domain names except as provided in Carequality’s published guidelines on use of trademarks. Organization shall not apply for registration of any trademark, service mark, trade dress, business name or company name, or logo that incorporates any Carequality Mark or any element confusingly similar to any Carequality Mark. In connection with any non-trademark, descriptive use of Carequality Marks, Organization will use the registration symbol ® or the trademark or service mark symbols, TM or SM, as more fully set out in the Carequality guidelines on use of trademarks, and indicate

in the text that the Carequality Mark used “is the registered trademark of Carequality,” “is the trademark of Carequality,” or “is the service mark of Carequality,” respectively.

15. ***Disclaimers.*** Organization acknowledges that Implementers and Carequality Connections may be added to or removed from the Carequality Directory at any time; therefore, Organization may not rely upon the inclusion in the Carequality Directory of a particular Implementer or Carequality Connection. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL CAREQUALITY OR ORGANIZATION BE LIABLE TO EACH OTHER OR ANY THIRD PARTY BENEFICIARY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, 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 THE PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING.

16. ***Miscellaneous/General***

16.1. **Amendment.** These Carequality Connection Terms may be amended by Sponsoring Implementer from time to time based upon changes required by Carequality. Sponsoring Implementer will provide Organization with notice of such amendment at least thirty (30) days prior to the effective date of such amendment.

16.2. **Third Party Beneficiary.** Carequality, other Carequality Connections of the Sponsoring Implementer, other Implementers and their Carequality Connections shall be deemed third party beneficiaries of these Carequality Connection Terms for purposes of enforcing Organization’s compliance with these Carequality Connection Terms.

**INTERSYSTEMS CACHÉ SOFTWARE ADDENDUM
STANDARD ADDENDUM – INTERSYSTEMS**

A part of the software supplied to You by Epic consists of the software (either M or Caché, as applicable) from InterSystems Corporation of Cambridge, Massachusetts ("InterSystems"). The following terms and conditions apply to the sublicense of the Sublicensed Software from Epic to You, the User, as required and authorized by InterSystems.

1. REPRESENTATION OR WARRANTIES OF INTERSYSTEMS

EXCEPT AS EXPRESSLY PROVIDED HEREIN, INTERSYSTEMS DOES NOT MAKE AND SHALL NOT BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, TITLE, DESIGN, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE OF THE SUBLICENSSED SOFTWARE OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE SUBLICENSSED SOFTWARE.

- a. InterSystems hereby represents and warrants as follows:
 - i. InterSystems has (a) valid title to the Sublicensed Software, free of all liens, encumbrances, restrictions and claims of others, (b) the right to license the same to Epic, and (c) the right to license Epic to grant sublicenses of the type granted to User by Epic.
 - ii. Any Sublicensed Software services performed hereunder or under any Sublicensed Software maintenance agreement between InterSystems and Epic shall be performed by highly skilled personnel qualified to perform such services and such services shall be performed in a professional and workmanlike manner in accordance with the then prevailing standards of the computer services industry.
 - iii. The Sublicensed Software and its use do not and will not violate or infringe upon any currently issued United States patent or any copyright, trade secret or other property right (whether conferred by statute, code, common law, or otherwise) of any other person or entity that is valid or enforceable in the United States or in any country in which Epic now maintains or hereafter maintains any office, property or data processing services.
 - iv. The Sublicensed Software, as delivered by InterSystems, is free from material defects in manufacturing and materials and shall operate substantially in conformance with the Applicable Specifications relating to such Sublicensed Software until thirty (30) days after the later of (a) initial delivery of the Sublicensed Software to User, and (b) the date when User first uses the Epic Program Property, whether for testing, training, processing of patient data or other purpose (the "Software Warranty Period").
- b. During the Software Warranty Period, InterSystems shall promptly provide, through Epic and at no charge to User, corrections, modifications or additions to the Sublicensed Software in the event that Epic notifies InterSystems in writing of any substantive errors in the Sublicensed Software. User shall assist Epic and, upon request, InterSystems, in identifying the circumstances in which any such substantive errors are discovered and, if requested by Epic or InterSystems, shall document the existence of the same. In no event shall InterSystems have any responsibility to correct any data base errors or errors or damages caused by or arising out of hardware defects or input errors or resulting from changes to or modifications of the Sublicensed Software made by Epic or User without the express written approval of InterSystems.
- c. All warranty claims or other claims pursuant to this section shall be made to InterSystems through Epic.
- d. The foregoing representations and warranties are by InterSystems only. Epic makes no representations or warranties pursuant to, and Epic shall have no liability arising out of, this section.

2. INDEMNIFICATION OF INTERSYSTEMS

- a. InterSystems shall, and hereby agrees to, indemnify, defend, and hold harmless User and its officers, employees, agents, and representatives, from and against any and all third-party claims, actions damages, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses arising out of the defense of any claim, whether proven or not) arising from or based upon a breach by InterSystems of any of its representations or warranties in Section 1(a)(i) or 1(a)(iii) above.
- b.

- i. The indemnities specified in Section 2(a) above shall not apply to a specific claim, action, or allegation unless User shall have provided written notice of such claim, action, or allegation to InterSystems as soon as practicable, and shall have granted InterSystems full opportunity to control the response thereto and the defense thereof, including without limitation any agreement relating to the settlement thereof; provided, however, that User shall have the right to monitor, at its own expense, InterSystems' defense of any such claim, action, or allegation and, if necessary, to preclude a default judgment or other loss of rights, to file pleadings on its behalf in the event InterSystems fails to fulfill its obligation to defend User pursuant to this Section 2.
 - ii. In the case of a claim based on a breach of the representation and warranty contained in Section 1(a)(iii) above, the indemnity specified in Section 2(a) shall not apply to any claim, action, or allegation (or any judgment or order related thereto) based upon: (a) the use by User of the Sublicensed Software in combination with other hardware or software not supplied, approved or authorized by InterSystems unless such use was contemplated by the System Documentation, where the use of the Sublicensed Software alone is not claimed or alleged to be an infringement; (b) the modification or alteration of the Sublicensed Software in a manner that is not approved by InterSystems; or (c) the failure by User to implement a release or engineer change order for the Sublicensed Software issued by InterSystems and supplied to User by Epic (which release or change order does not preclude the Sublicensed Software from meeting the standards specified in Section 1(b)).
- c. In the event that the Sublicensed Software (or any component or part thereof) becomes the subject of any claim, action, or allegation of the type specified in Section 1(a)(iii), InterSystems shall promptly use all reasonable efforts at its expense: (a) to procure for User the right to continue using the Sublicensed Software (or applicable component or part thereof); or (b) if such continued use cannot be so procured, to modify it to become non-infringing; or (c) if such modification cannot be so implemented, to provide substitute hardware, software, or other products, components or parts of similar capability acceptable to and approved by User, which approval shall not be unreasonably withheld or delayed.
 - d. THE FOREGOING STATES THE ENTIRE OBLIGATION OF INTERSYSTEMS WITH RESPECT TO THE INFRINGEMENT OF PATENTS, COPYRIGHTS, AND OTHER PROPRIETARY RIGHTS.
 - e. The foregoing indemnification is by InterSystems only. Epic makes no indemnification pursuant to, and Epic shall have no liability arising out of, this section.

3. LIMITATION OF LIABILITY

Except as specifically set forth in Sections 1 and 2 above, InterSystems shall have no liability of any kind to the User, whether direct or indirect, for any loss or damage suffered by the User or its employees, agents or representatives, or customers or patients using the facilities or retaining the services of the User, as a result of or arising out of the Sublicensed Software.

The liability of InterSystems for any loss or damage directly or indirectly suffered by User as a result of any defects in the Sublicensed Software or any acts of omission of InterSystems or its officers, employees, agents, or representatives hereunder shall in no event exceed any amount equal to the license fees paid or owed to InterSystems by Epic in respect of the specific Sublicensed Software or services on account of which User has suffered loss or damage. The foregoing shall not apply to damages awarded to third parties under InterSystems' indemnification obligations set forth in Section 2; or claims of property damage or bodily injury or those claims based on the willful misconduct of InterSystems.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL INTERSYSTEMS BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY EVEN IF INTERSYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH DAMAGES SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF SAVINGS OR REVENUE, LOSS OF USE OF THE LICENSED SOFTWARE OR ANY ASSOCIATED EQUIPMENT OR SOFTWARE, COST OF CAPITAL, COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME, THE CLAIMS OF THIRD PARTIES (INCLUDING, WITHOUT LIMITATION, CUSTOMERS OR OTHER PERSONS USING THE FACILITIES OF THE USER), AND PROPERTY DAMAGE.

4. PROPRIETARY RIGHTS AND CONFIDENTIALITY

- a. The Sublicensed Software and related materials (including, without limitation, the System Documentation) are and shall remain, the sole property of InterSystems or one or more of its affiliates. No right to print or copy, in

whole or in part, any such Sublicensed Software, System Documentation or related materials is granted hereunder except as herein expressly provided. The Sublicensed Software is licensed for a specific Platform (a "Platform" is a family of computers that use the same operating system and have a software compatible CPU instruction set and architecture; Platform information is available on the InterSystems' website). Except in the case of Platform Independent Licenses, a transfer fee is charged by InterSystems if the license is transferred from one Platform to another.

- b. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE USER AGREES NOT TO (i) DECOMPILE, DISASSEMBLE OR REVERSE ENGINEER THE LICENSED SOFTWARE OR (ii) USE OR DISCLOSE OR DIVULGE TO OTHERS ANY DATA OR INFORMATION RELATING TO THE LICENSED SOFTWARE AND/OR THE TECHNOLOGY, IDEAS, CONCEPTS, KNOW-HOW AND TECHNIQUES EMBODIED THEREIN.
- c. The obligations of confidentiality and non-use described in Section 4(b) above shall not be deemed to include disclosure or other use of such data or information to the extent that the User can prove the same is or becomes publicly known within the public domain (other than by acts attributable to the User or any of its officers, agents, shareholders of privately-held companies, employees or representatives). Information shall not be deemed to be in the public domain by reason of the general licensing and other commercial disposition of the Sublicensed Software by InterSystems in the ordinary course of its business. The existence of a copyright notice shall not cause, or be deemed or construed as causing, the Sublicensed Software or System Documentation to be published copyright work or to be in the public domain.
- d. Nothing contained in this Section shall prohibit the User or any of its officers, agents, shareholders, employees or representatives from:
 - i. using his or its general technical skills when not otherwise inconsistent with the terms hereof; or
 - ii. disclosing data or information pursuant to any enforceable administrative or judicial order, provided, however, that the User first notifies InterSystems of the entry or existence of such order and of the User's intention to comply with its terms. Data or information shall not be deemed to be in the public domain solely by reason of any such order.
- e. The User further agrees:
 - i. except for back-up security, testing, and regulatory purposes, not to copy, reproduce or duplicate, or allow to be copied, reproduced or duplicated, in whole or in part, the Sublicensed Software. User may only copy the System Documentation or any related materials as necessary to use the Sublicensed Software;
 - ii. not to provide or otherwise make available any Sublicensed Software, System Documentation or related materials in any form to any other person or organization, without the prior written consent of InterSystems; and
 - iii. that it will take appropriate action with its officers, agents, shareholders, employees or representatives, by instruction, agreement or otherwise, to satisfy its obligations under this Agreement with respect to use, copying, modification, and protection and security of the Sublicensed Software, System Documentation and related materials. Without limiting the generality of the foregoing, the User shall in any event devote the same degree of care to protecting the Sublicensed Software and System Documentation as it devotes to the protection of its own confidential and proprietary information.
- f. In the event of any breach or threatened breach of the provisions of this Section, InterSystems shall, in addition to all other rights and remedies available to it at law or in equity, be entitled to seek a temporary or permanent decree or order restraining and enjoining such breach. The parties hereby expressly acknowledge and understand that damages at law may be an inadequate remedy in the event of such a breach or threatened breach.
- g. If, having complied with the foregoing provisions of this Section, the User has actual notice of any unauthorized possession, use or knowledge of any part of the Sublicensed Software or physical embodiment thereof, or of the System Documentation or any other information made available pursuant to this Agreement by anyone else other than persons authorized by this Agreement to have such possession, use or knowledge, the User agrees to notify InterSystems promptly of the circumstances surrounding such unauthorized possession, use or knowledge.
- h. The User shall not remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Sublicensed Software or any related materials or System Documentation in the User's possession.

- i. Subject to other restrictions contained herein, User shall have the right to grant access to the Sublicensed Software to its employees. In addition, the Sublicensed Software may also be used, solely to run Epic's Program Property (and not to develop or run other applications), by other organizations to whom the User provides access to Epic's Program Property, unless the providing of such access is the primary relationship between the User and other said organizations. Therefore, User can grant access to the Sublicensed Software to the employees, officers, agents, subcontractors and medical staff of User and such other organizations to the same extent User is permitted to grant such persons access to Epic's Program Property under the Epic License and Support Agreement.
- j. User shall use the Sublicensed Software only to run the Epic Program Property or applications developed by the User to be run in conjunction with the Epic Program Property, but the primary use must be to run the Epic Program Property.

5. DEFINITIONS

For the purposes of this Addendum only, the following definitions apply to the capitalized terms as follows.

"Applicable Specifications" means, in the case of any Sublicensed Software, the functional, performance and operational characteristics of such Sublicensed Software as set forth in the System Documentation.

"Sublicensed Software" means the computer programs (which, unless otherwise determined by InterSystems in its sole discretion, shall be in Object Code version only) licensed by InterSystems through Epic to You hereunder, together with any repairs, upgrades, and updates to the Sublicensed Software, and any enhancements and related items which InterSystems may announce while the Agreement is in effect.

"System Documentation" means the documentation, reference manuals, user guides and other standard visually readable materials relating to the Sublicensed Software furnished by InterSystems to Epic and licensed by Epic to You hereunder.

SQL ADDENDUM

This is a software license (the “Sublicense and Limited Warranty”) authorized by Knowledge Based Systems, Inc. (“KBS”), a Virginia corporation, with its mailing address at 43053 Midvale Court, Ashburn, VA 20147. The KB_SQL Software (“SOFTWARE”) is sublicensed by Epic to You as the end user; it is not sold. The SOFTWARE is subject to the following license terms and conditions.

1. LICENSE

1.1. Copyright

The SOFTWARE is copyrighted material. Once You have paid the required license fee, You may use the SOFTWARE for as long as You do not violate the copyright and if You follow these simple rules.

1.2. Maximum Number of Users

You may use the SOFTWARE on any computer or computer network for which it is designed so long as no more than the specified number of concurrent user(s) use it at any one time. Your license to use the SOFTWARE allows use of the SOFTWARE both (a) by the specified number of concurrent users in a single production environment, AND, simultaneously, (b) by the specified number of concurrent users in a single shadow environment for real-time or near-real time data access and reporting. Alternatively, you may use the SOFTWARE in two shadow environments for real-time or near-real time data access and reporting, so long as You make no use of the SOFTWARE in any production environment. If Your number of concurrent users in any environment exceeds your licensed level of concurrent users, You must upgrade Your license to an appropriate number of users or pay for additional copies of the SOFTWARE. Additionally, use of the SOFTWARE for real-time or near-real time data access and reporting in more than two environments as described in this paragraph (either production and one shadow or two shadows), requires the purchase of additional copies of the SOFTWARE for each such additional environment.

1.3. Copies

You may make copies of the SOFTWARE for backup purposes and for use in non-production environments in conjunction with Epic Software. All such copies, together with the original, must be kept in Your possession or control.

For purposes of this paragraph:

- 1.3.1. a shadow environment is for backup purposes if the SOFTWARE gets copied to the environment only due to replication, or if the SOFTWARE is installed on the environment for disaster recovery, as long as (in either case) the SOFTWARE is not used in the shadow environment;
- 1.3.2. environments such as Test, Release, and Train (whether created as shadows or otherwise), in which no useful, production use of the SOFTWARE occurs, are non-production environments;
- 1.3.3. a shadow environment in which the SOFTWARE is used for real-time (or near real time) data access and reporting purposes (i.e., one which has the purpose or effect of load-balanced reporting) requires appropriate licensing as provided in paragraph 1.2.

1.4. Modifications

You may not make any changes or modifications to the licensed SOFTWARE, and You may not decompose, disassemble, or otherwise reverse engineer the SOFTWARE. You may not rent or lease it to others.

1.5. Breach of this Agreement

In the event You materially breach this Sublicense and Limited Warranty, Epic or KBS may, at their sole option in addition to other remedies, terminate Your right to use the SOFTWARE.

- 1.6. You acknowledge that You do not have the right to resell or sublicense SOFTWARE under any circumstances, although You are permitted to allow access to and use of the SOFTWARE to the same extent as You are permitted to allow access to and use of Epic software, subject to the restrictions stated in section 1.2 above.

2. USING COMPILED QUERY ROUTINES

2.1. Query Routines

Compiled Query Routines that are generated by the KB_SQL compiler may be used, given away or sold without additional license or fees.

3. LIMITED WARRANTY

3.1. Distribution Media and Documentation

KBS warrants the physical distribution media (diskettes, tape, etc.) and physical documentation shipped with the SOFTWARE to be free of defects in materials and workmanship for a period of 60 days from the purchase date. If KBS receives notification within the warranty period of defects in materials or workmanship, and such notification is determined to be correct, KBS will replace the defective distribution media or documentation.

3.2. Product Returns

DO NOT RETURN ANY PRODUCT UNTIL YOU HAVE CALLED THE KBS CUSTOMER SERVICE DEPARTMENT AND OBTAINED AUTHORIZATION FOR SUCH RETURN.

3.3. No Other Warranties

KBS SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES SHALL EPIC HAVE ANY LIABILITY WHATSOEVER WITH RESPECT TO THE SOFTWARE OR ANY WARRANTY HEREUNDER.

3.4. Breach of this Limited Warranty

THE ENTIRE AND EXCLUSIVE LIABILITY AND REMEDY FOR BREACH OF THIS LIMITED WARRANTY SHALL BE LIMITED TO REPLACEMENT OF DEFECTIVE DISTRIBUTION MEDIA OR DOCUMENTATION AND SHALL NOT INCLUDE OR EXTEND ANY CLAIM FOR OR RIGHT TO RECOVER ANY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF GOODWILL, PROFIT, USE OF MONEY, DATA OR USE OF THE SOFTWARE, OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR OTHER SIMILAR DAMAGE CLAIMS, EVEN IF KBS HAS BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL KBS'S LIABILITY FOR ANY DAMAGES TO YOU OR ANY OTHER PERSON EVER EXCEED THE LOWER OF SUGGESTED LIST PRICE OR ACTUAL PRICE PAID FOR THE LICENSE TO USE THE SOFTWARE, REGARDLESS OF THE FORM AND LEGAL THEORY OF THE CLAIM INCLUDING BREACH OF EXPRESS OR IMPLIED WARRANTIES, BREACH OF CONTRACT, MISREPRESENTATIONS, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHERWISE ARISING OUT OF THIS SUBLICENSE AND LIMITED WARRANTY.

4. GOVERNING LAW AND GENERAL PROVISIONS

4.1. Commonwealth of Virginia

This Sublicense and Limited Warranty shall be construed, interpreted and governed by the laws of the Commonwealth of Virginia notwithstanding Virginia's conflict of law doctrine and any action hereunder shall be brought only in Virginia.

4.2. Choice of Forum

The parties agree that all litigation to continue or enforce this Agreement shall be brought in the United States District Court for the Eastern District of Virginia (Alexandria Division). The parties hereby consent to the exclusive jurisdiction of that court, and universally waive objection based on venue or inconvenient forum to litigation in that court.

4.3. Severability, Contribution, and Modification

If any provision is found void, invalid or unenforceable it will not affect the validity of the balance of this Sublicense and Limited Warranty which shall remain valid and enforceable according to its terms. If any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusion of damages set forth herein shall remain in full force and effect. This Sublicense and Limited Warranty may only be modified in writing signed by You and a specifically authorized representative of KBS.

4.4. Restricted Rights Legend

Use, duplication or disclosure by the U.S. Government of the computer software and documentation in this package shall be subject to the restricted rights under DFARS 52.227-7013 applicable to commercial computer software. All rights not specifically granted in this statement are reserved by KBS.

COSMOS ADDENDUM

The following provisions apply to Your use of Cosmos, an item of Epic Program Property. If You elect to participate in Cosmos, You agree to comply with this Cosmos Addendum and the Cosmos Rules of the Road attached to this Addendum as Exhibit B. This Addendum is sometimes referred to herein as the “Cosmos Terms”.

1. **Definitions.** All capitalized terms used in this Addendum and not defined in Exhibit A to this Addendum have the meanings given to them in the Regulations (as that term is defined in Exhibit A to this Addendum).
2. **Purpose of Cosmos.** Cosmos brings together health information from millions of patient records to bring evidence-based medicine into clinical practice, improve patient care, support public health interventions, and serve as a resource for research and discovery. By participating in Cosmos, Your organization joins other Epic Community Members and Epic in realizing the promise of observational health data to discover insights that will empower Your clinicians and help people live healthier, longer, and more productive lives.
3. **Benefits of Participation.** Your participation in and use of Cosmos has the potential to rapidly advance clinical and public health research and improve lives. It also makes Your organization eligible to receive fees generated through Externally-Funded Research. Fees received by Epic or Cosmos Participants for services related to Externally-Funded Research will be distributed among Cosmos Participants and Epic. For clarity, nothing in this Addendum is intended to be, nor should be construed as, an inducement or payment for recommending or arranging for the purchase of goods, data, or services.
4. **Cosmos Terms.**
 - a. **Data Sharing.** You agree to share Your Cosmos Data with Epic, which will be combined with other data in Cosmos to create the Cosmos Dataset. You will control the filtering of Your Cosmos Data, so You can (for instance) honor patient requests not to include their health information in Your Cosmos Data and abide by laws applicable to You. You grant Cosmos Users a perpetual and irrevocable license to use Your Cosmos Data for Research, Public Health, and Health Care Operations purposes and to disclose Your Cosmos Data to other Cosmos Users, consistent with the Rules.
 - b. **Access to Cosmos.** Access to Cosmos will be granted only to Cosmos Users. To create flexibility in the future to address new use cases while also safeguarding the Cosmos Dataset, any other proposed categories of Cosmos Users will be evaluated using Epic’s then-applicable process and must be agreed to by the Governing Council, a majority of Cosmos Participants, and Epic. You may discontinue using and contributing Your Cosmos Data to the Cosmos Dataset at any time as described in this Addendum. You agree to share Your Cosmos Data under the condition that access to Your Cosmos Data will only be granted to Cosmos Users. Epic may subcontract hosting or other processing of the Cosmos Dataset to an Epic Owned Entity or other third party with which Epic enters into an appropriate agreement to protect the privacy and security of the Cosmos Dataset, including a Business Associate Agreement.
 - c. **Data Use.**
 - i. You can use the Cosmos Dataset for Your own self-funded Research and publish Your findings, which might include insights derived from the Cosmos Dataset. If You publish findings made possible by Cosmos, You agree to acknowledge that Cosmos was used for Your Research in such publication. You can also use the Cosmos Dataset to utilize Epic functionality that might be powered by Cosmos. You will not (1) sell or give away the Cosmos Dataset or any De-identified Version, (2) allow unauthorized third parties to access Cosmos, the Cosmos Dataset or any De-identified Version, or (3) use the Cosmos Dataset or any De-identified Version or Cosmos in exchange for direct or indirect payment from a third party, unless permitted by these terms and the Rules.
 - ii. Cosmos is also intended to support Your ability to perform Externally-Funded Research. If You want to use Cosmos for Externally-Funded Research or to share findings made possible by Cosmos with a third party in exchange for any form of compensation (such as payments, royalties, or license fees), You will first submit Your request to Epic for review using Epic’s then-applicable process for such requests. Epic will review Your request in consultation with the Governing Council to determine whether the use is appropriate and aligns with the purpose of Cosmos. If Epic approves Your request, the third party that is funding Your Externally-Funded Research (whether in part or in whole) or compensating You for findings may be required to pay Epic for such use of Cosmos, and You may be responsible for facilitating such payment. Epic will distribute a portion of these

fees from third parties to Cosmos Participants who assisted, directly or indirectly, in the generation of such fees.

- iii. If You identify other potential uses of Cosmos (such as the development of new commercial tools, products, or services) that are consistent with the Regulations but not addressed in this Addendum or the Rules, then upon Your request, the Governing Council and Epic will discuss such uses with You.
- iv. To help enable Your Research activities, a De-identified Version will be made available for analysis using analytics tools. To support those and all other activities permitted by this Addendum and the Rules, You agree that Epic may create De-identified Versions of the Cosmos Dataset. Epic will not sell or give away the Cosmos Dataset or any De-identified Version. Use of any collaborative analytics tools and materials made available by Epic or by other Cosmos Users for use in connection with the Cosmos Dataset is governed by the Cosmos Collaborative Analytics Tools terms (available at <https://galaxy.epic.com/s/Cosmos-Tools>; a current copy is attached as Exhibit C). Because Epic anticipates making additional tools and materials available over time, Epic may update Exhibit C from time to time, and future updates are effective as soon as they are published. You are responsible for checking for updated terms before using any available analytics tools and materials.
- v. **HIPAA Data Use Agreement.** In accordance with 45 CFR § 164.514(e), Epic will:
 1. Not use or disclose Your Cosmos Data except as permitted by the Rules and this Addendum, or as otherwise required by law;
 2. Use appropriate safeguards to prevent use or disclosure of Your Cosmos Data other than as provided for in the Rules and this Addendum;
 3. Report to You any use or disclosure of Your Cosmos Data not provided for by the Rules or this Addendum of which Epic becomes aware;
 4. Not identify or contact individuals who are the subjects of Your Cosmos Data; and
 5. Require everyone given access to the Cosmos Dataset, including agents who receive Your Cosmos Data, to agree to a Cosmos User Agreement with the same restrictions and conditions that apply to Epic with respect to use of Your Cosmos Data. The Cosmos User Agreement will, at a minimum, require Cosmos Users to:
 - a. Not use or disclose the Cosmos Dataset except as permitted by the Rules and the Cosmos User Agreement or required by law;
 - b. Use appropriate safeguards to prevent use or disclosure of the Cosmos Dataset other than as provided for in the Rules and the Cosmos data use agreement;
 - c. Report to Epic any use or disclosure of the Cosmos Dataset not provided for by the Rules or the Cosmos User Agreement of which they become aware; and
 - d. Not identify, attempt to identify, or contact individuals who are the subjects of the Cosmos Dataset. The current version of the Cosmos User Agreement is available on Galaxy at: <https://galaxy.epic.com/s/Cosmos-UserAgreement>.
- d. **Your Responsibilities.** You agree that You have determined You may disclose Your Cosmos Data to Epic and other Cosmos Users as described in this Addendum. You are responsible for Your Cosmos Users' compliance with this Addendum, the Cosmos User Agreement, and the Rules to the same extent as You are responsible for all users accessing software licensed to You under the Agreement. You agree to access the Cosmos Dataset and any De-identified Version using only Epic-specified means and tools.
- e. **Changes to Cosmos Terms; and Discontinuing Participation.**
 - i. Epic may modify the Cosmos Terms; modifications to the Cosmos Terms will apply to all Cosmos Participants, to the extent permitted by the law applicable to them. The Rules will also change over

time, and Epic will make future versions available to You through Epic’s UserWeb or another website.

- ii. You may discontinue using and contributing Your Cosmos Data to Cosmos at any time. To protect Cosmos Users’ ability to continue and validate their Research, Your Cosmos Data will remain in the Cosmos Dataset after You stop contributing data or Your license to use Cosmos ends, subject to the terms of this Section. This section will survive any termination of Your use of Cosmos. Epic may elect to stop providing Cosmos for Your use at any time. If Epic decides to stop providing Cosmos, Epic will return or destroy Your Cosmos Data in accordance with the Regulations.

f. **Governing Council Indemnification.** The Cosmos Governing Council and Epic oversee Cosmos and administer the Rules, including recommending modifications to the Rules, determining when there are violations, and establishing appropriate remedies. In connection with these and other Oversight Activities, Epic may periodically monitor use of Cosmos to confirm compliance with the Rules and the Cosmos Terms. The Governing Council may include representatives from Your organization, other Cosmos Users, and Epic. Epic would like to protect the Governing Council from liability for carrying out the Oversight Activities. Therefore, to the extent permitted by the law applicable to You, You agree to indemnify, defend, and hold harmless the Indemnitees (i.e., the Governing Council, Epic and APS, and each of their officers, employees, contractors, and agents) from and against any Claim brought by You or any of Your Users or Your Patients and arising out of or in any way connected with the Oversight Activities, including Claims based on an Indemnitee’s negligence. For purposes of this Section., (1) “Claim” means a claim, damage, liability, claim of loss, lawsuit, cause of action, or other claim and includes without limitation reasonable attorneys’ fees; (2) “Your Users” means any individual or entity to whom You provide or provided access to any Program Property or other Epic software licensed to You if the Claim relates to any situation in which the individual or entity had or would have had access to the Program Property or other Epic software through You; and (3) “Your Patients” means any individuals whose data is included in Your Cosmos Data.

5. **Limitations.** Cosmos runs on infrastructure that is shared across all Cosmos Users and Epic may need to balance loads or take other actions to throttle or limit Your volume of Cosmos usage to ensure a productive experience for all Cosmos Users. Cosmos is provided “AS IS”, without any warranty. **EPIC’S TOTAL LIABILITY TO YOU FOR ALL CLAIMS (INDIVIDUALLY AND IN THE AGGREGATE) ARISING UNDER OR RELATING TO THIS ADDENDUM AND/OR USE OF COSMOS WILL NOT EXCEED ONE HUNDRED THOUSAND US DOLLARS (\$100,000) (WHETHER THE LIABILITY ARISES OUT OF THE SOFTWARE, SERVICES, OR OTHERWISE).**

Exhibit A – Definitions

1. “**Cosmos Data**” means a Limited Data Set submission from a Cosmos Participant containing Epic-specified data elements, shared with Epic for inclusion in the Cosmos Dataset.
2. “**Cosmos Dataset**” means the dataset maintained by Epic comprised of all Cosmos Participants’ Cosmos Data and other data, consistent with the Rules.
3. “**Cosmos Participant**” means each Epic Community Member that participates in Cosmos and contributes to the Cosmos Dataset.
4. “**Cosmos Terms**” means all sections of the Addendum relating to Cosmos.
5. “**Cosmos User Agreement**” means the then-current online user agreement required to be entered into by everyone given access to the Cosmos Dataset, available on Galaxy at <https://galaxy.epic.com/s/Cosmos-UserAgreement> .
6. “**Cosmos Users**” means (1) Cosmos Participants (including You) and the individual users to whom they grant access to Cosmos through their organizations, (2) Epic and any Epic Owned Entity, (3) government entities or enforcement agencies pursuant to a formal government investigation or a valid, mandatory court order, and (4) Your affiliated academic partners, institutes, and medical schools, as permitted by the Cosmos Governing Council and Epic consistent with the Rules.
7. “**De-identified Version**” means the version of the Cosmos Dataset de-identified in accordance with 45 CFR 164.514(b), in accordance with the Cosmos Terms.
8. “**Epic Community Members**” means Epic’s then-current customers and their Affiliates, as permitted in their agreements with Epic.
9. “**Epic Owned Entity**” means an entity that (1) directly or indirectly owns or controls (including by membership interest) more than 50% of Epic, or (2) is more than 50% owned or controlled, directly or indirectly, by Epic or an entity described in clause (1).
10. “**Externally-Funded Research**” means Research that is funded by private sector organizations or government agencies and has a primary purpose of contributing to evidence-based clinical practice and improving the delivery of care.
11. “**Galaxy**” means Epic’s online documentation library. You may subscribe to update notifications for any Galaxy document by clicking the star icon next to the document in search results, or the star icon that appears when you open the document, to mark it as a favorite. Learn more at Galaxy: Everything You Want to Know.
12. “**Indemnitees**” means, collectively, the Governing Council, Epic and APS, and each of their officers, employees, contractors, and agents.
13. “**Oversight Activities**” means activities taken by Epic and the Cosmos Governing Council to oversee Cosmos and administer the Rules, including recommending modifications to the Rules, determining when there are violations of the Rules, and establishing appropriate remedies for any such violations.
14. “**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 date of this Addendum (such regulations may also be referred to as “HIPAA”).
15. “**Rules**” the Cosmos Rules of the Road available on Galaxy, a current version of which is attached as Exhibit B to this Addendum.

Exhibit B – Cosmos Rules of the Road

When we have participation from hundreds of organizations combining EHR data from hundreds of millions of patients, together we can improve the health and lives of people everywhere. Cosmos is what helps make that possible. It brings together data from across the Epic community to form the world’s largest database of EHR patient information, to help You:

- **Provide the best care.** Cosmos will share insights based on millions of patients and interactions right at the point of care with *Best Care Choices for My Patient*.
- **Collaborate with peers.** Through *Look-Alikes*, Cosmos will connect clinicians who care for similar patients with rare characteristics so they can collaborate and learn from each other’s experience.
- **Accelerate the pace of healthcare innovation.** When You and hundreds of Your peers share data with Cosmos, You can draw upon the collective data of the Epic community to analyze health information and create knowledge at an unprecedented scale.

The Cosmos Rules of the Road establish a governance framework and a common set of participation guidelines for organizations using Cosmos.

1. Using Cosmos.

- 1.1. In order to use Cosmos, You will appoint a Cosmos representative to serve as Your primary contact on Cosmos matters.
- 1.2. You will send data to Cosmos through the “Cosmos Data Transport Framework,” which helps automate data exchange. The data You share will be a HIPAA Limited Data Set of defined data from all patient encounters documented in Your production environment. You can find some reasonable exclusions to this rule in Section 4.3. Contributing data to the Cosmos Dataset and participating in a maintenance program for EpicCare Ambulatory EHR or EpicCare Inpatient Clinical System provides You the right to use Cosmos.

2. Access to the Cosmos Portal.

- 2.1. You may grant access to the Cosmos Portal to individuals such as Your clinicians, Your clinical researchers, and Your employed executives who have access to Your Epic system and use that access for work-related purposes on Your behalf. Any other potential users, such as those employed by academic institutions, require Epic’s approval. Additionally, You will follow Epic’s and the Governing Council’s most recent guidance about [granting Cosmos Portal access](#).
- 2.2. Cosmos Users access the Cosmos Portal through a secure web-based application made available by Epic.
- 2.3. Cosmos Users who are also permitted to access Your Epic system are bound by the terms of the then-current Cosmos user agreement signed by You. Other Cosmos Users, such as academic researchers, must accept the then-current online Cosmos user agreement before using Cosmos. You agree that Your Cosmos Users’ acceptance of the online user agreement constitutes a legally binding agreement between each Cosmos User and Epic. For clarity, You remain responsible for the activities of all Cosmos Users that You allow to have access to Cosmos.
- 2.4. Cosmos Users cannot download, copy, screenshot, or otherwise remove any of the Cosmos Dataset from Cosmos.
- 2.5. You will manage the process to provide Your Cosmos Users with their credentials for the Cosmos Portal, and You are responsible for Your Cosmos Users, including their compliance with these Rules, HIPAA, license terms, and other Cosmos requirements.
- 2.6. You will not allow third parties (e.g., consultants, vendors, outsourcing firms) to have access to Cosmos unless their access is recommended by the Cosmos Governing Council, agreed to by the majority of Cosmos community members, and agreed to by Epic.

3. Uses of the Cosmos Dataset.

- 3.1. You can use the Cosmos Dataset as outlined in the Cosmos Terms. Cosmos allows You to improve the understanding of the causes, treatment, and prevention of disease, to advance healthcare knowledge, and to use Epic-provided tools

like Look-Alikes and Best Care for My Patient. Epic might also use the Cosmos Dataset for the same reasons above and to improve its software, services, and analytics, and to test, audit, and administer Cosmos.

- 3.2. You cannot use the Cosmos Dataset in any way that violates HIPAA or the Cosmos Terms, including:
 - 3.2.1. To try to identify individuals whose data comprises the Cosmos Dataset, whether using the Cosmos Dataset alone or in combination with any other data; or
 - 3.2.2. To try to identify clinicians or specific organizations associated with the Cosmos Dataset, whether using the Cosmos Dataset alone or in combination with any other data unless agreed to by Epic and such clinicians or specific organizations (such as in connection with participation in Site Identification); or
 - 3.2.3. For advertising purposes or published healthcare-related market comparisons/analyses of clinicians or organizations.
- 3.3. The Cosmos Dataset and access to the Cosmos Portal cannot be sold or exchanged for any type of payment or consideration unless allowed under Section 2, above.
- 3.4. Epic may also:
 - 3.4.1. Collect Cosmos performance data, including executed queries, for auditing and other purposes associated with Cosmos or Epic's operations;
 - 3.4.2. Publish insights gained through analysis of the Cosmos Dataset, usage statistics, data set characteristics, and other operational data about Cosmos; and
 - 3.4.3. Identify Cosmos Users as needed to improve Epic's software and services, and to support functionality in Epic's software, such as Look-Alikes and public health reporting tools, and in other cases with a user's consent.

4. Cosmos Dataset Review.

- 4.1. Epic may revise the Cosmos Dataset from time to time, consistent with the requirements of a Limited Data Set under HIPAA. You will have an opportunity to review such revisions and determine whether to continue participating in Cosmos.
- 4.2. The Cosmos Dataset is discretely structured and mapped to specified standards to ensure the data is high-quality. To share data, You will map necessary data elements and update these mappings as terminology, or the Cosmos Dataset, evolves. You can learn more about dataset mapping in Epic's Cosmos Setup and Support Guide.
- 4.3. Because internal policies and regulatory obligations vary, You are responsible for ensuring that:
 - 4.3.1. Your participation and data submissions are consistent with applicable laws, regulations, and policies.
 - 4.3.2. When You send data to Cosmos, You exclude third-party materials or data that You do not have the right to submit (e.g., proprietary third-party content).

5. Governing Council.

- 5.1. Epic facilitates a Cosmos Governing Council (the "Governing Council"), which is a board of representatives from the Epic community that provides strategic guidance for Cosmos and oversees compliance with these Rules.
- 5.2. If You identify a use of Cosmos that is inconsistent with these Rules or other Cosmos requirements, let Epic know. Epic and the Governing Council will follow a set process to adjudicate grievances. Cosmos Users who misuse Cosmos could be denied access to it. Users named in a grievance agree to cooperate and either accept and comply with the Governing Council's decision or stop participating in Cosmos. While grievances are being settled, the Governing Council or Epic might decide to suspend access to Cosmos for a user or their organization. During that time, the user's organization is not required to send data to Cosmos.
- 5.3. If the Governing Council or Epic identifies a use of Cosmos or the Cosmos Dataset that is inconsistent with the spirit of Cosmos, they might temporarily impose additional restrictions on such use until the use can be reviewed and the

Rules can be updated if needed. Epic will post any additional restrictions on the UserWeb and inform Your Cosmos Coordinator about such restrictions.

5.4. As the developer of Cosmos, Epic may revise its governance or the Governing Council's Operating Procedures from time to time.

6. Publications. When You publish Your findings made possible through Cosmos, in accordance with Section 2.3.1. of the Cosmos Terms, please acknowledge, somewhere within each publication, that Cosmos was used for Your research. Please also send the Governing Council, on a semi-annual basis, a list of citations to Your publications and any other publications that cite Your findings or otherwise reference the research You conducted using Cosmos.

7. Privacy and Security.

7.1. To protect the Cosmos Dataset, please implement safeguards, including training for Cosmos Users on the appropriate and inappropriate uses of Cosmos. Disciplinary procedures for the inappropriate use of the Cosmos Dataset should be the same as for inappropriate use of other, similar information.

7.2. If Epic identifies a security vulnerability that could threaten the privacy and security of Cosmos, Epic may take action to limit access or data transmission to Cosmos.

8. Ceasing Your Use of Cosmos. If You decide to stop using Cosmos, You agree to inform Epic of Your decision in accordance with the Cosmos Terms. If You do not participate in the maintenance program for EpicCare Ambulatory EHR, EpicCare Inpatient Clinical System, or other key items of software identified by Epic, Your license to use Cosmos will be terminated. After Your license to use Cosmos ends, Your users will no longer have access to Cosmos. However, any data You contributed prior to ending Your use of Cosmos will continue to be available to current Cosmos users, to the extent supported by Epic.

9. Refinement of the Rules.

9.1. These Rules will be refined over time. Changes to these Rules will require approval by a majority vote from the Governing Council and by Epic.

9.2. Updated Rules will be posted on the UserWeb and will typically take effect 45 days after they are posted. If Epic determines the matter is of immediate concern, the change might take effect before the updated Rules are posted or soon thereafter.

Capitalized terms that are not defined in the Rules or the Cosmos Terms have the definitions assigned in 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 date the Rules were last revised (such regulations, "HIPAA"). References to Cosmos include the Cosmos Dataset (defined above) as appropriate given the context, and with respect to permitted uses of the Cosmos Dataset, references to users include Epic. Each organization using Cosmos is a third-party beneficiary of these Rules.

Exhibit C – Cosmos Collaborative Analytics Tools

Collaborative analytics tools help Cosmos Users to make discoveries using the Cosmos Dataset and share those discoveries with others. Sharing and collaboration allow Cosmos Users to build on each other’s successes. This Exhibit sets community expectations for sharing, collaboration, and community building when using analytics tools with the Cosmos Dataset.

All capitalized terms used and not defined in this Exhibit C have the meanings given to them in the Cosmos Addendum, Exhibit A, or the Regulations (as that term is defined in Exhibit A).

1. **Community and Project Use.** A variety of tools and materials (“Tools and Materials”) are or will be available to Cosmos Users to facilitate and enhance their Research, review of Research findings, and other activities conducted using Cosmos. These Tools and Materials may include queries, notebooks, modules, dashboards, code, analysis, algorithms, models, Research findings, groupers, and third-party data sets, and may be used in connection with permitted uses of Cosmos. Tools and Materials may be developed by You or Your Cosmos Users (“Your Tools and Materials”) or by Epic (“Epic Tools and Materials”). Tools and Materials must be used in accordance with the Cosmos Terms, including the Rules and this Exhibit C. You can work with two different types of Tools and Materials:
 - 1.1. “**Project Tools.**” These are Tools and Materials You or Your Cosmos Users share and use among only Your Cosmos Users, with Epic, or with selected other Cosmos Users outside of Your organization to work on a research project that uses the Cosmos Dataset (a “Project”). Cosmos includes designated workspaces where Project Tools may be shared. Cosmos Users may also share Project Tools with other Cosmos Users through other methods such as email or file-sharing services. Project Tools may be subject to additional license terms and other restrictions, which may be required by the Cosmos User that provides a Project Tool to others or an administrator of a Project (“Project Administrator”).
 - 1.2. “**Community Tools.**” These are Tools and Materials that are available to all Cosmos Users. Community Tools can be used by all Cosmos Users with no additional limitations.
2. **License Rights for Your Tools and Materials.** If You or Your Cosmos Users choose to collaborate with others by sharing Your Tools and Materials, You are responsible for understanding what rights You give to others based on how You share those Tools and Materials.
 - 2.1. Any Tools and Materials shared by You or Your Cosmos Users with another Cosmos User or submitted to a Project Administrator become Project Tools, and Your Cosmos Users grant a license to such Project Tools to the Cosmos User(s) they shared them with, as well as to those Cosmos Users invited by a Project Administrator to work on a Project that uses such Project Tools. You are responsible for choosing and making available the license terms that apply to such Project Tools. These license terms cannot be revocable for reasons other than breach and cannot give licensees the right to use the Project Tools outside of Cosmos, unless Epic agrees in advance and in writing to such use outside of Cosmos for those specific Project Tools. Cosmos enables open sharing and collaboration between Cosmos Users to make discoveries from their combined data; however, if You want to charge a fee for such a license, You will first submit Your request to Epic for review using Epic’s then-applicable process for such requests. Epic will review Your request to determine whether the use is appropriate and aligned with the purpose of Cosmos. If You or Your Cosmos Users share Project Tools without making license terms available, then the terms in Section 2.4. of this Exhibit C will apply to those Project Tools.
 - 2.2. It is important that Epic can continue developing Cosmos for use by Cosmos Participants without being blocked by intellectual property claims. Therefore, in addition to the terms in any license Your Cosmos Users apply per Section 2.1 of this Exhibit C, Epic reserves the right, and You grant Epic a non-exclusive, non-revocable, limited license at no cost, to use all, part, or none of any such Project Tools as necessary to manage, administer, and ensure proper performance and proper use of Cosmos. You will not enforce against Epic or against any Cosmos User(s) with whom you shared your Project Tools any intellectual property rights in such Project Tools that Your Cosmos Users share with Epic or other Cosmos Users. In addition, You will not assign any such intellectual property rights to a third party that has not agreed to the restriction in the preceding sentence, and any purported assignment otherwise is void.

- 2.3. You are responsible for monitoring and approving the Cosmos Users who may use Project Tools for any Project that You or Your Cosmos Users administer. You are also responsible for ensuring that Project Tools Your Cosmos Users share for a Project are limited to those You want to make available to other Cosmos Users who either currently or will in the future have access to that Project.
- 2.4. By sharing Your Tools and Materials with Epic to be distributed as Community Tools or by sharing Tools and Materials with another Cosmos User without license terms, You and Your Cosmos Users waive any copyrights, trade secret rights and other proprietary rights that You may have with respect to those Tools and Materials. Epic and other Cosmos Users may use, reproduce, distribute, perform, display, modify and prepare derivative works of any Tools and Materials that are subject to this paragraph.
- 2.5. You understand that other Cosmos Participants may currently or in the future be developing tools or materials that may be similar to Your Tools and Materials, and nothing in this Exhibit C will prohibit other Cosmos Participants from doing so, including from competing with Your Tools and Materials, so long as other Cosmos Participants do not use or disclose any proprietary aspects of Your Tools and Materials if such use or disclosure is prohibited by Your license terms. Nothing in this Exhibit C will prohibit Cosmos Participants from using, at any time and for any purpose, the Residual Information retained by those Cosmos Participants having access to Your Tools and Materials, subject to any patents or copyrights of You. For purposes of this Exhibit C, “Residual Information” means ideas, concepts, and techniques, retained in the memories of individuals without the aid of any document or other recorded or stored information containing proprietary information about Your Tools and Materials.
- 2.6. Epic expects that the purpose of Tools and Materials will be for working with other Cosmos Users within Cosmos. If You feel any Tools and Materials have relevant use outside of Cosmos and wish to use them in that way, Epic will review requests and decide, in its sole discretion, whether to make such Tools and Materials available outside of Cosmos for use in other contexts. For the avoidance of doubt, Epic will not approve any request to use Tools and Materials outside of Cosmos if they include any of the following or derivatives thereof: Epic’s code, the Cosmos Dataset, or a De-identified Version.
3. **Epic Tools and Materials.** Epic may provide Tools and Materials to Cosmos Users, either within or outside of Cosmos. Epic Tools and Materials, and any derivative works of Epic Tools and Materials, are for use only in connection with Cosmos, and are subject to the same license terms as Cosmos unless Epic makes available separate license terms for Epic Tools and Materials.
4. **Ownership.** If any Tools and Materials contain or bear a trademark, service mark or trade name of a contributor, You do not acquire any license to use or any other rights to such trademark, service mark or trade name. You do not acquire any ownership in or other right to transfer or enforce rights relating to any Epic Tools and Materials, any Tools and Materials contributed by anyone other than You, or anything that is derivative of Tools and Materials contributed by someone other than You. You may not sell any such Tools and Materials covered by this Section 4 of this Exhibit C. For these purposes, “sell” means any distribution or licensing of any Tools and Materials made in exchange for the payment of a fee or other transfer of value.
5. **Your Responsibilities.** Your use of the Tools and Materials (including any part thereof) is subject to all limitations in the Cosmos Terms. You are solely responsible for the performance or non-performance of Your Tools and Materials, and for ensuring Your Tools and Materials do not include third-party materials or any data that You do not have the right to make available to Epic or other Cosmos Users. When using Tools and Materials shared with You, You are solely responsible for Your use of any Tools and Materials or any insights generated through such use. If Epic grants approval, pursuant to Section 2.1 or Section 2.6 of this Exhibit C, for use of any Tools and Materials outside of Cosmos, You will review, modify, and validate such Tools and Materials for appropriateness in Your environment before using such Tools and Materials in Your environment for any purpose. You waive all claims related to Tools and Materials, including against Epic, Epic Owned Entities, Epic Community Members, and others associated with the Tools and Materials.
6. **Indemnification.** By downloading or using any Tools and Materials (including any part thereof) You agree, to the extent permitted by law applicable to You, to hold harmless, indemnify, and defend Epic, its officers, employees, agents, any contributor of any Tools and Materials (including any Epic Community Members providing any Tools and Materials) and any users of any Tools and Materials from and against any loss, damage, liability, claim of loss, lawsuit, cause of action, or other claim asserted against them or any of them arising out

of, or in any way connected with, Your performance of any activity hereunder. By contributing any Tools and Materials to Epic or any Cosmos User, You and Your Cosmos Users represent that You have the rights necessary to do so, or if use of any such Tools and Materials requires any licenses from third parties, that You have identified such licenses to Cosmos Users. You agree, to the extent permitted by law applicable to You, to defend, hold harmless, and indemnify Epic, its officers, employees, agents, and any users of any Tools and Materials from and against any loss, damage, liability, claim of loss, lawsuit, cause of action, or other claim asserted against them or any of them arising from an allegation that the Tools and Materials as contributed by You infringe any patents, copyrights, trade secrets or other intellectual property right of a third party.

7. **Copyright Infringement and Intellectual Property Agent for Notice.** Epic respects the intellectual property of others, and we ask Cosmos Users to do the same. Epic may at its discretion limit, disable and/or terminate the access of any Cosmos User who may be infringing the intellectual property rights of others. If You believe that any of the Tools and Materials are an unauthorized replication of Your proprietary work or otherwise infringe upon Your intellectual property rights, please provide Epic's copyright agent notice containing the following information:

- 7.1. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- 7.2. a description of the copyrighted work or other intellectual property that You claim has been infringed;
- 7.3. a description of where the material that You claim is infringing is located;
- 7.4. Your address, telephone number, and email address;
- 7.5. a statement by You that You have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law;
- 7.6. a statement by You, made under penalty of perjury, that the above information in Your notice is accurate and that You are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

Epic's agent for notice of claims of copyright or other intellectual property infringement can be reached as follows:

By mail: General Counsel, Epic Systems Corporation, 1979 Milky Way, Verona, WI 53593
By email: LegalNotices@epic.com

8. **Third Party Beneficiary.** You acknowledge and agree that all Cosmos Users and all contributors of any Tools and Materials are third party beneficiaries of Sections 2, 4, 5, and 6 of this Exhibit C and shall have the right to enforce such sections in the same manner as if such person had a direct contract with You.

QHIN Addendum

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 Assistant Secretary for Technology Policy/Office of the National Coordinator for Health Information Technology ("ASTP/ONC"), represents the next era of interoperability. TEFCA aims to improve and simplify connectivity across a broad set of use cases — starting with treatment. ASTP/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 ("Epic Nexus QHIN") which enables organizations to participate in health information exchange via TEFCA. All Participants in TEFCA must comply with the TEFCA Participant/Subparticipant Terms of Participation, which are a standard set of terms and expectations that govern the TEFCA Ecosystem. The TEFCA Participant/Subparticipant Terms of Participation are designed to ensure all members of the TEFCA community operate under the same expectations, regardless of the QHIN to which each organization connects. The current standard TEFCA Participant/Subparticipant Terms of Participation are attached hereto. The current Epic Nexus QHIN Policies are available on in the "TEFCA Toolkit" on [Galaxy](#) for easy reference in the future.

Epic Nexus QHIN Agreement

By participating in the Epic Nexus QHIN, You (as a "Subparticipant") are bound to the terms of this Agreement (the "Agreement") and the terms of the TEFCA Participant/Subparticipant Terms of Participation.

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**" means Epic Nexus, Inc.
 - 1.4. "**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.
 - 1.5. "**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.
 - 1.6. "**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.
 - 1.7. "**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.

- 1.8. “**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.
 - 1.9. “**Epic Parent**” means Epic Systems Corporation, located at 1979 Milky Way, Verona, Wisconsin 53593.
 - 1.10. “**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.
 - 1.11. “**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.
 - 1.12. “**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.
 - 1.13. “**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 attached to this Agreement.
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. Subparticipant 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 and Subparticipants 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.** Subparticipants will use best efforts to resolve any issues that may arise between Subparticipants and other Epic Nexus QHIN Participants through informal discussions. If, after good faith efforts, Subparticipant and the other Epic Nexus QHIN Participant are unable to successfully resolve the issues, then Subparticipant 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 Subparticipant submits a Dispute to the Governing Council or is named in a Dispute submitted to the Governing Council, Subparticipant will participate in the Epic Nexus QHIN Dispute Resolution Process as established by the Epic Nexus QHIN Policy: Dispute Resolution and Participant Enforcement. Subparticipant 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 Subparticipant 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 10 of the Terms of Participation.
- 3.3. **Immediate Injunctive Relief.** Notwithstanding Sections 3.1 and 3.2, Subparticipant may be relieved of its obligation to participate in the Epic Nexus QHIN Dispute Resolution Process if Subparticipant (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 Subparticipant 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. Subparticipant 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. If the injunctive relief sought pursuant to Section 3.3 is not granted and Subparticipant 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 any party's obligations hereunder, unless Subparticipant suspends or terminates its rights in accordance with the TECCA Participant/Subparticipant Terms of Participation.
- 3.5. **Implementation of Agreed Resolution.** If at any point during the Epic Nexus QHIN Dispute Resolution Process Subparticipant and all other parties to the Dispute accept a proposed resolution of the Dispute, Subparticipant 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 Subparticipant, the Dispute was not adequately resolved, Subparticipant may pursue any additional remedies available to it.

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

- 4.1. Subparticipant acknowledges that Epic Nexus QHIN IP is protected under applicable United States law. Subparticipant 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, Subparticipant 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, Subparticipant 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. Subparticipant 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 Subparticipant believes may be applicable to any Contribution made by Subparticipant. 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. Subparticipant may not use Epic Nexus QHIN IP or the intellectual property of Epic Nexus' affiliates including Epic Parent to brand any of Subparticipant's products or services and may not incorporate any Epic Nexus QHIN IP in any of Subparticipant's domain names except as provided in guidelines on the use of trademarks published by Epic Nexus or its affiliates including Epic Parent. Subparticipant 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.

5. *Accountability.*

- 5.1. **Harm to the RCE.** Subparticipant shall be responsible for harm suffered by the RCE to the extent that the harm was caused by Subparticipant's breach of this Agreement, a Framework Agreement, an applicable SOP, and/or an Epic Nexus QHIN Policy.
- 5.2. **Harm to the Epic Nexus QHIN.** Subparticipant shall be responsible for harm suffered by the Epic Nexus QHIN to the extent the harm was caused by Subparticipant's breach of this Agreement, a Framework Agreement, an applicable SOP, and/or an Epic Nexus QHIN Policy.
- 5.3. **Harm to other QHINs.** Subparticipant shall be responsible for harm suffered by another QHIN to the extent that the harm was caused by Subparticipant's breach of this Agreement, a Framework Agreement, an applicable SOP, and/or an Epic Nexus QHIN Policy.
- 5.4. **Epic QHIN Accountability.** Subparticipant 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.

6. **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. Subparticipant 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 Subparticipant possess such information. Nothing in this Section shall be construed as limiting or modifying Subparticipant'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.

7. *Miscellaneous*

- 7.1. **Epic Nexus QHIN Policies.** Subparticipant agrees to 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.
- 7.2. **Survival.** (Required Flow-down) The following provisions will survive for the specified period following the expiration or termination of this Agreement.
- 7.2.1. Section 3, Epic Nexus QHIN Dispute Resolution, shall survive the expiration or termination of this Agreement indefinitely.
- 7.2.2. Section 4, Contributions; IP Rights; Ownership of Materials; License, shall survive the expiration or termination of this Agreement indefinitely.
- 7.2.3. Section 5, Accountability, shall survive the expiration or termination of this Agreement indefinitely.
- 7.2.4. Section 7, Miscellaneous, will survive the expiration or termination of this Agreement indefinitely.

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 TEFCA 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 TEFCA 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 TEFCA 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 TEFCA 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 TEFCA 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 TEFCA 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. 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 TECCA 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 TECCA 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 TECCA 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 TECCA Information in connection with Connectivity Services or TECCA 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 TEFC 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 TEFC Exchange. You acknowledge and agree that Upstream QPS has the same authority as the RCE to suspend Your ability to engage in TEFC Exchange, and Your Subparticipant's (if any) ability to engage in TEFC 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 TEFC 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 TEFC 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 TEFC Exchange is suspended, Your and any of Your Subparticipants' ability to engage in TEFC 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 TEFC 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 TEFC 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 TEFC 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 TEFC 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, TECCA Security Incidents Reporting, shall survive for a period of six (6) years following the expiration or termination of these ToP.