

Business Associate Exhibit

BACKGROUND

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

TERMS

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

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

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

- k. Following Business Associate's discovery of a Breach of Unsecured Protected Health Information, Business Associate will notify Covered Entity of such Breach in accordance with §§ 164.410 and 164.412 of the Regulations.
- l. Restriction against Sale of PHI. Business Associate will not sell PHI or receive any direct or indirect remuneration in exchange for PHI except as permitted by this Exhibit, the Agreement or federal law.

3. Permitted Uses and Disclosures by Business Associate.

- a. Except as otherwise expressly limited in this Exhibit, Business Associate may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of, Covered Entity in connection with the Agreement, the Common Agreement, and any other agreements in effect between Covered Entity and Business Associate, including without limitation the provision of software implementation, maintenance and support services, provided that such use or disclosure would not violate the Regulations if done by Covered Entity.
- b. Except as otherwise expressly limited in this Exhibit, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c. Except as otherwise expressly limited in this Exhibit, Business Associate also may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if the disclosure is Required By Law, or if Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Except as otherwise expressly limited in this Exhibit, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by § 164.504(e)(2)(i)(B) of the Regulations.
- e. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1) of the Regulations.

4. Termination.

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

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

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

b. Effect of Termination.

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

5. Miscellaneous.

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

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