



This public contract has been redacted at the request of the contractor to protect their trademark and proprietary business information.

Hosting Services Agreement

This Hosting Services Agreement (the “Agreement”) is made between Epic Hosting, LLC, which is located at 1979 Milky Way, Verona, Wisconsin 53593 (“Epic”); and the County of San Mateo with its principal place of business at 555 County Center Fl 4, Redwood, City, CA 94063 (“You” and “Your Address”).

BACKGROUND

You have entered into a License and Support Agreement with Epic Parent dated _____ for the license and certain services related to the Program Property (the “Epic License”). You would also like Epic to provide certain Hosting Services and other Professional Services. Epic is willing to provide You such Services based upon the terms and conditions set forth in this Agreement.

Epic and You agree as follows:

1. DEFINITIONS

The definitions provided on Appendix A apply to this Agreement.

2. RIGHTS GRANTED

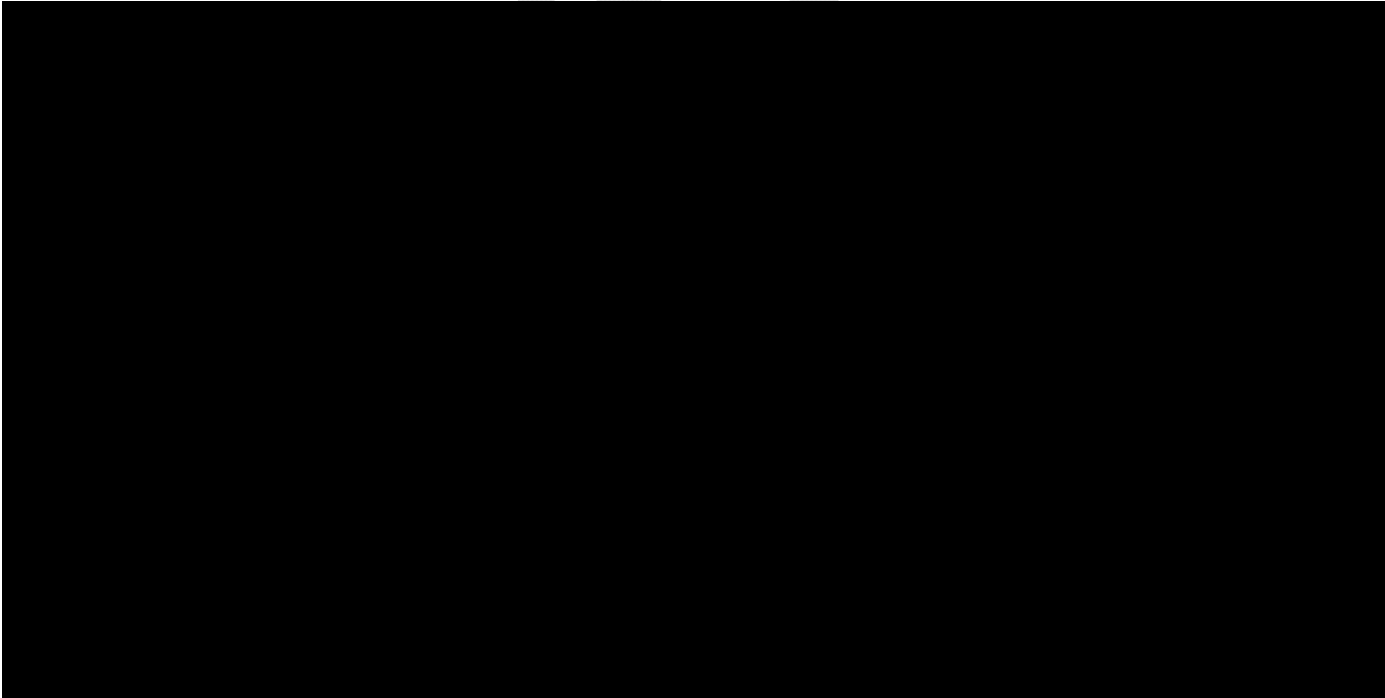
- a. **Services.** Epic grants You a non-exclusive, limited right during the Term to access and use the Hosting Services in the United States, subject to the terms of this Agreement. You may allow Your Users to access and use the Hosting Services in accordance with the preceding sentence and with You having the same responsibility to Epic for Your Users’ actions and omissions as if they were Your actions or omissions. This Agreement does not give You any license or right to access or use or to allow others to access or use the Hosting Services other than as expressly set forth in this Agreement.
- b. **Technical Support.** Epic will provide You with technical support for the Hosting Services during the Term as described in Exhibit 5.
- c. **Your Stored Materials.** You grant Epic the right to use, process, store and transmit Your Stored Materials during the Term in accordance with this Agreement.

3. SERVICE SPECIFICATIONS

- a. **General.** The Services Specifications describe provisioning and management processes, types and quantities of system resources, and other functional and technical requirements applicable to the Hosting Services. The pricing provided on Exhibit 1 is based upon the Services Specifications. You agree that use of the Hosting Services in a manner inconsistent with the Services Specifications may adversely impact the performance of the Services and may result in additional fees.
- b. **Changes to Services Specifications.** Epic may make changes or updates to the Services Specifications from time to time in its sole discretion including with respect to infrastructure, security, technical configurations and application features. However, Epic agrees that it will not make any changes to the Services Specifications during the Initial Term that would materially degrade the quality of the Hosting Services and have a material adverse impact on Your organization.

4. TERM AND TERMINATION

- a. **Term and Renewal.** By execution of this Agreement, You have contracted for the Initial Term. Before the expiration of the Initial Term, the parties may extend the Term for a renewal period subject to Epic’s then-standard renewal terms as may be agreed upon in an amendment to this Agreement signed by the parties or in an Epic-prepared form signed by You. This Agreement and Your and Your User’s rights to access and use the Hosting Services will continue until the end of the Initial Term or any renewal period, unless terminated earlier as provided in this Section 4 or as expressly provided elsewhere in this Agreement.
- b. **Termination for Cause.** A party (the “Notifying Party”) may terminate this Agreement if the other party (the “Breaching Party”) materially breaches its obligations and does not cure the breach within [REDACTED] days of receipt of notice from the Notifying Party. The notice will be provided in the manner specified in Section 11, will reference this Subsection 4(b) or state it is a notice of material breach of the Agreement, and will describe the breach in sufficient detail to permit the Breaching Party to cure the breach. Termination of the Epic License or the Maintenance Program under the Epic License also will terminate this Agreement pursuant to this Subsection 4(b).
- c. **Termination Upon Bankruptcy, Insolvency and the Like.** Subject to applicable bankruptcy and insolvency laws, if either party (i) ceases the active conduct of business; (ii) voluntarily becomes subject to a bankruptcy or insolvency proceeding under federal or state statute; (iii) has filed against it an involuntary petition for bankruptcy that is not dismissed within sixty (60) days of filing; (iv) becomes insolvent or subject to direct control by a trustee, receiver or similar authority; or (v) winds up or liquidates its business, voluntarily or otherwise, then the other party may, at its sole option, terminate this Agreement immediately.

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- e. **Effect of Termination.** If the Agreement is terminated by the expiration of the Initial Term or a renewal period in accordance with Subsection 4(a), due to Your uncured material breach [REDACTED] then, upon Your request to Epic prior to termination by written notice in accordance with Section 11, the “Applicable Termination Transition Period” will be up to [REDACTED] days after the effective date of termination. For any other termination, upon Your request to Epic prior to termination by written notice in accordance with Section 11, the “Applicable Termination Transition Period” will be the period that You are

actively converting to a replacement vendor or self-hosting that does not exceed the earlier of the expiration of the Initial Term or a renewal period or twelve (12) months from the effective date of the termination.

During the Applicable Termination Transition Period, You may use the Hosting Services in accordance with this Agreement, provided that You may not extend use of the Hosting Services beyond Your use as of the date of termination, You continue to pay fees for the Hosting Services as if the Agreement had not terminated, and, if the Hosting Services extend beyond the date that the Initial Term or a renewal period would have expired, You pay Epic its then-standard charges on its then-standard terms for such extended period.

- f. **Survival.** The following terms will survive termination: Subsections 3(b) and 4(e), Sections 5 and 6, Subsections 7(c) and 7(d), Sections 8-14, and the terms of any amendments, Change Orders or other standard forms prepared by Epic and signed by You to the extent provided in such exhibits and agreements or covering similar subject matter to other surviving terms.

5. PAYMENTS

- a. **Fees.** You agree to pay fees for Hosting Services and Professional Services as set forth in this Agreement. The initial Hosting Services fees are set forth on Exhibit 1. Hosting Services fees are subject to annual increases after the first twelve (12) months following the Effective Date and to other increases in accordance with the Agreement (including Exhibit 1). When any such annual increase is made under the preceding sentence during the Initial Term (which, for the sake of clarity, excludes other increases in accordance with the Agreement), it will not exceed [REDACTED]. The Professional Services fees for Epic's administration of the Hosting Services as described in Exhibit 2 and Epic's technical support services described as included in Exhibit 5 are included in the fees for the Hosting Services in Exhibit 1. Fees for other Professional Services (including any services Epic may perform with respect to Non-Hosting Errors) are chargeable separately at Epic's then-standard rates. Epic's current standard rates for Professional Services are listed on Exhibit 4 and will not increase during the first twelve (12) months following the Effective Date.
- b. **Payment Date; Interest.** You will pay Epic all fees and expenses by [REDACTED] days after the invoice date, or if later, by the date specified on the invoice or in this Agreement [REDACTED]. Interest will accrue for overdue Uncontested Amounts at the lesser of one percent (1%) per month or the maximum rate allowed by law. If any Uncontested Amount is more than sixty (60) days overdue, Your non-payment will be a material breach of this Agreement and, Epic may, with written notice to You and notwithstanding anything else in this Agreement, restrict Your access to the Hosting Services to read only access; if any Uncontested Amount remains unpaid after ninety (90) days, Epic may provide You with a

backup copy of a then-current version of Your Data to permit You to find another provider of hosting services; and if any Uncontested Amount remains unpaid after one-hundred and twenty (120) days, Epic may suspend Your access to the Hosting Services. These rights are in addition to any other rights Epic may have under this Agreement, including all termination rights.

- c. **Taxes.** Except for taxes based on or measured by Epic's net income, all taxes (including sales, use, excise, property, and similar taxes) arising out of this Agreement or otherwise related to the Hosting Services (including all taxes related to access or use of the Hosting Services by Your Users or to any other software or services under the Epic License) will be Your responsibility. If Epic pays or is required to pay any such taxes (or related penalties or interest), You will promptly reimburse Epic. You have advised Epic that all of the transactions related to this Agreement are tax-exempt. You will substantiate any tax-exempt status by providing Epic with evidence satisfactory to the relevant tax authorities. At Epic's reasonable request, You also will provide other relevant documentation, confirm Your payment of taxes, or facilitate Epic's collection of taxes. If Your tax status changes, You will promptly inform Epic by an e-mail to finance@epic.com.
- d. **Hourly Fees; Out-of-Pocket Expenses.** All hourly fees, travel and other out-of-pocket expenses sustained by Epic under this Agreement are due as incurred. You will approve travel in writing in advance, and travel expenses will be in accordance with Epic's travel policy, the current version of which is attached as Exhibit 11. If You are more than sixty (60) days past due in paying reimbursable expenses, Epic may require You to prepay expenses.
- e. **Fee Budgeting.** As of the Effective Date, You expect the total costs in this Agreement for the Initial Term will be no more than \$14,847,484 (the "Initial Budgeted Amount") for the purpose of satisfying Your payment obligations related to the Services as of the Effective Date under the terms and provisions of this Agreement. The Initial Budgeted Amount is based on the assumptions and initial usage and storage costs set forth in Exhibit 1, the assumption that You provide effective project leadership, decision making and human and other resources, Your current expectations for general inflationary economic impacts, and other assumptions set forth in this Agreement. You have informed Epic that You have available the Initial Budgeted Amount for the purpose of satisfying Your payment obligations for the Initial Term under this Agreement. Epic has been advised and understands that the continued funding for this Agreement and any amounts in excess of the Initial Budgeted Amount are subject to approval by the County of San Mateo.



6. CONFIDENTIAL INFORMATION

- a. **Your Hosting Confidential Information.** Epic will not disclose to any individual, entity, or other third party any of Your Hosting Confidential Information, except: (a) as required by law or court order; (b) with Your consent; or (c) to an Owned Entity in connection with Epic's or such Owned Entity's performance of obligations or exercise of rights under an agreement with You.
- b. **Business Associate Exhibit.** To address the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and associated regulations, the parties agree to the terms of Exhibit 8.
- c. **Epic Hosting Confidential Information.** You understand and agree that Epic Hosting Confidential Information contains certain confidential information protected by operation of law and this Agreement. Consistent with that understanding and to protect the rights of Epic, You agree that You will: (i) maintain in confidence any Epic Hosting Confidential Information; and (ii) limit access to the Hosting Services to Your Users in the United States.
- d. **Public Records Act.** Epic recognizes that You are subject to the California Public Records Act ("PRA"), Government Code §§ 6250, et seq. Epic will work with You to provide necessary information (e.g., a copy of the Agreement with Epic Confidential Information redacted for Your response to a PRA request) to facilitate Your timely meeting Your legal obligations with respect to any legally required disclosure. If requested pursuant to a PRA request to disclose the

redacted copy of the Agreement referenced in the immediately preceding sentence or any documents which contain Epic Hosting Confidential Information, You will give Epic notice and a copy of such PRA request [REDACTED]

so that Epic may review the requested records. Epic may request You withhold, or redact those portions of, such records that Epic asserts are confidential or exempt from disclosure as provided under California law. Prior to any required disclosure, You and Epic will discuss how You are responding and Epic may seek a protective order, and You will reasonably cooperate with Epic's efforts to protect any Epic Hosting Confidential Information against disclosure, [REDACTED]

If a requestor seeks to obtain the redacted information through a court proceeding, You will promptly notify Epic allowing Epic reasonable time to oppose such request. [REDACTED]

[REDACTED]

7. REPRESENTATIONS, WARRANTIES, AVAILABILITY AND RESPONSE TIME

- a. **Professional Services Warranty.** Epic warrants that it will perform its Professional Services in a competent manner. [REDACTED]
- b. **Hosting Services.** Provisions related to the availability of the Hosting Services are provided in Exhibit 6 and provisions related to Application Response Time Guidelines of the Program Property used by You through the Hosting Services are provided in Exhibit 7. [REDACTED]
- c. **Limitations.** EPIC DOES NOT GUARANTEE THAT (A) THE PROVISION OF THE HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT EPIC WILL CORRECT ALL ERRORS IN THE HOSTING SERVICES, (B) THE HOSTING SERVICES WILL OPERATE IN CONNECTION WITH YOUR STORED MATERIALS AND WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY EPIC, OR (C) THE SERVICES WILL MEET YOUR REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT EPIC DOES NOT CONTROL THE TRANSFER OF DATA OVER THE INTERNET, AND

THAT THE HOSTING SERVICES WILL BE SUBJECT TO LIMITATIONS INHERENT IN THE USE OF THE INTERNET. EPIC IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. EPIC IS NOT RESPONSIBLE FOR ANY PROBLEMS OR DAMAGES OF ANY KIND RELATED TO THE PERFORMANCE, SECURITY, OR GENERAL OPERATION OF THE HOSTING SERVICES THAT ARISE FROM ANY OF YOUR USERS' ACTS OR OMISSIONS (INCLUDING VIOLATIONS OF THE ACCEPTABLE USE GUIDELINES IN EXHIBIT 5), YOUR STORED MATERIALS, YOUR HARDWARE, THIRD PARTY CRIMINAL ACTS, OR THIRD PARTY CONTENT.

- d. **Exclusion of Representations and All Other Warranties.** THE ABOVE EXPRESS LIMITED WARRANTY IS EXCLUSIVE. EPIC DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF ACCURACY, TITLE, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, AND WARRANTIES AGAINST INFRINGEMENT AND INTERFERENCE WITH ENJOYMENT . NO EPIC EMPLOYEE OR ANY OTHER PARTY IS AUTHORIZED TO MAKE A WARRANTY OR REPRESENTATION NOT IN THIS AGREEMENT.

8. LIMITATIONS OF LIABILITY

- a. **DISCLAIMER; CAP.** THE TERMS IN THIS SECTION APPLY WHETHER THE LIABILITY ARISES OUT OF OR RELATES TO THE SERVICES OR OTHERWISE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY UNDER THIS AGREEMENT. NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, ENHANCED, CONSEQUENTIAL OR INDIRECT DAMAGES, OR LOSS OF BUSINESS, PROFIT OR REVENUE (OTHER THAN AMOUNTS OWED FOR THE SERVICES), ANTICIPATED SAVINGS, GOODWILL, OR REPUTATION, EVEN IF THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR THEY OTHERWISE WERE FORESEEABLE. EPIC'S TOTAL LIABILITY WILL NOT EXCEED, IN THE AGGREGATE FOR ALL CLAIMS ARISING OUT OF OR RELATED TO ANY BREACHES OF YOUR UNSECURED PROTECTED HEALTH INFORMATION (AS DEFINED IN 45 C.F.R. SUBPART D) THAT ARISE, OCCUR, OR COMMENCE DURING A SECURITY DEFAULT PERIOD, THE FEES PAID BY YOU TO EPIC FOR THE SERVICES UNDER THIS AGREEMENT IN THE THREE (3) MONTHS PRECEDING THE DATE THE LAST SUCH CLAIM WAS FILED. MOREOVER, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL LIABILITY EXCEED, IN THE AGGREGATE FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE FEES PAID BY YOU TO EPIC FOR THE SERVICES UNDER THIS AGREEMENT IN THE EIGHTEEN (18) MONTHS PRECEDING THE DATE THE LAST SUCH CLAIM WAS FILED. THE LIMITATIONS SET FORTH IN THIS SUBSECTION 8(A) WILL NOT APPLY TO: (I) A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SUBSECTIONS 10(A) AND 10(B) OF THIS AGREEMENT, AND (II) YOUR OBLIGATIONS TO EPIC FOR ALL FEES PAYABLE IN ACCORDANCE WITH THIS AGREEMENT (INCLUDING FEES THAT EPIC MAY CHARGE PURSUANT TO THIS AGREEMENT FOR USE OF THE SERVICES BEYOND ANY RESTRICTIONS OR LIMITATIONS SET FORTH IN THIS AGREEMENT).
- b. **Relationship to Epic License; Third Party Beneficiaries.** The Hosting Services are being provided under this Agreement to host the Program Property licensed to You by Epic Parent under the Epic License. Except as provided in this Section, nothing in this Agreement is intended to modify any of the rights, obligations, agreements or undertakings contained within the Epic License nor modify any of the limitations contained therein. The provision of Services under this Agreement is governed exclusively by the Agreement and not the Epic License, even if the Services are performed by Epic Parent. Any breach under this Agreement by either party, and all liability of Epic, Epic Parent, and You arising out of or relating to unauthorized use or disclosure of Your Hosting Confidential Information or Epic Hosting

Confidential Information, will be governed exclusively by this Agreement and not any otherwise applicable terms of the Epic License. Epic is responsible for any such liability of Epic Parent and Epic Parent is a third party beneficiary of the provisions of this Section. Except as provided in the preceding sentence, this Agreement does not create any third party beneficiary.

- c. **Force Majeure.** Neither party is liable for delay in performance or nonperformance caused by a Force Majeure Event. The period of performance will be deemed extended to reflect such delay or as otherwise agreed by the parties.
- d. **Timing of Actions.** Neither party will commence a Claim in arbitration or court for a matter arising out of or relating to this Agreement, the Services, or any other services, software, materials, reports, or other information provided by Epic more than twelve (12) months after the cause of action first arose.

9. SUBCONTRACTING AND ASSIGNMENT

- a. **Subcontracting.** Epic has subcontracted and may subcontract any services to be performed under this Agreement to Epic Parent or any of its Owned Entities at any time. Epic also has subcontracted and may subcontract such services to a third party provider of products or services (e.g., public cloud or other infrastructure as a service providers, software licensors like Microsoft or an application presentation tier provider, infrastructure, hardware or storage providers, security monitoring services, and telecommunications companies) at any time. Epic is responsible to You for the work performed by its subcontractors to the same extent as it is for Epic's own work. Relevant terms of this Agreement apply to subcontractors in the same manner as they apply to Epic. As between You and Epic, any source code, object code, and associated documentation provided to You by the subcontractor pursuant to this Agreement will be owned by Epic and subject to all applicable confidentiality and use restrictions as if such code or documentation had been provided by Epic. Epic may provide the subcontractor with a copy of those sections of this Agreement with which the subcontractor must comply. If the subcontractor needs access to Your Hosting Confidential Information to perform the subcontracted services, then Epic may provide such access if the subcontractor agrees in writing to comply with the same or similar restrictions that apply to Epic under this Agreement with respect to such information. In addition, You agree that Epic Parent may disclose Your Confidential Information (as such term is defined in the Epic License) to Epic in connection with Epic Parent's or Epic's performance of obligations or exercise of rights under an agreement with You.
- b. **Assignment by Epic.** Epic may assign this Agreement either to an Owned Entity or as part of the acquisition of substantially all of Epic's assets by another entity. In either case, the assignee must agree in writing to the assignment and the Agreement's terms. Epic will remain liable for Epic's obligations under this Agreement if the assignee fails to satisfy them.
- c. **Assignment by You.** You may assign this entire Agreement either to an Owned Entity or as part of the acquisition of substantially all of Your assets by another entity. In either case, the assignee must be a hospital or physician organization, must not be an Epic competitor, and must agree in writing to the assignment and the Agreement's terms. You will be liable for the obligations under this Agreement if the assignee fails to satisfy them. You will not assign, transfer, delegate, sublicense, or timeshare Your right to use the Hosting Services or this Agreement, in part or in whole, other than as expressly provided in this Agreement. Any attempt to do so, whether by You or on Your behalf, is void.

10. INDEMNIFICATIONS

- a. **Indemnification by Epic.** Epic will defend or settle, indemnify, and hold harmless Your Indemnitees from any third-party Claim brought against them to the extent: (1) it is a Claim of infringement of a patent, copyright, or trademark, in each case enforceable in the United States; (2) it is based on the Hosting Services in the form provided to You by Epic and Your use of such Hosting Services in accordance with this Agreement; and (3) it is not based on use of the Hosting Services in combination with other hardware or software except to the extent use of the Hosting Services alone would

constitute infringement. You will promptly notify Epic in writing of the Claim, provide Epic with the information reasonably required for its defense, and grant Epic exclusive control over its defense and settlement. If such a Claim is or Epic becomes aware that it may be brought, Epic may:

- i. procure the right for You to continue to use the applicable Hosting Services that are the subject of the Claim (including as may be modified or replaced as described below), or
- ii. modify, replace, or remove the applicable Hosting Services or a portion of the Hosting Services such that the resulting Hosting Services have substantially similar or better capabilities;

or, if Epic determines that none of the foregoing is technically feasible or commercially reasonable,

- iii. terminate this Agreement and refund any unused, prepaid fees that You may have paid under this Agreement.

This Subsection 10(a) states the entire liability and obligation of Epic to Your Indemnitees arising out of or relating to violations of intellectual property rights.

- b. **Indemnification by You.** You will defend or settle, indemnify, and hold harmless Epic Indemnitees from any third-party Claim brought against any Epic Indemnitee alleging that Your Stored Materials infringe any patent, copyright, or trademark and from any Claim arising out of Your or any of Your User's use or inability to use any of the Services, including if caused by Epic Indemnitee negligence. To the extent applicable, You will obtain Epic's prior written consent to any settlement or judgment in which You agree to any action or forbearance by an Epic Indemnitee, finding of fault of an Epic Indemnitee, or defect in the Services.

11. NOTICE

- a. **General.** Notice required under this Agreement must be in writing, delivered by reputable overnight courier, by U.S. mail via registered, certified or overnight delivery and return receipt requested, or by personal delivery, and addressed to:

If to Epic:

President
Epic Hosting, LLC
1979 Milky Way
Verona, WI 53593

with a copy to:

LegalNotices@epic.com

or to such other address and e-mail address as Epic may designate by notice to You; and

If to You:

County Health System – Health IT
225 37th Ave
San Mateo, CA 94403

with a copy to:

County Attorney's Office
400 County Center, 6th Floor
Redwood City, CA 94063
Facsimile: 650/363-4034

or to such other address as You may designate by notice to Epic.

- b. **Invoices.** Invoices should be sent by e-mail to:

hs_hit_accountspayable@smcgov.org

or to such other e-mail address as You may designate by e-mail to finance@epic.com.

- c. **Payments.** Payments should be made payable to Epic Hosting, LLC and sent to:

Epic Hosting, LLC
Bin 88065
Milwaukee, WI 53288-0065

or to such other address as Epic may designate by notice to You.

12. RESTRICTION ON OFFERS OF EMPLOYMENT

Epic and You will not solicit, discuss prospective employment with, or hire (directly as employees or indirectly) any employee of the other party, except with the other party's prior written consent. The restriction in the previous sentence applies during an individual's employment with the other party and for twelve (12) months following such employment, and only to employees who have worked on the provision or use of the Services. Epic may choose not to work with or train former Epic staff hired in violation of this Subsection. Notwithstanding the foregoing, and for the avoidance of doubt, nothing contained in this Section 12 will prevent an Epic employee whose position at Epic was unrelated to the provision or

use of the Services from securing a publicly posted position with You that is unrelated to the Services. For the avoidance of doubt, a general job announcement or position posting will not violate the foregoing as long as such announcement or posting is not targeted specifically at the other party's personnel, [REDACTED]

[REDACTED] Notwithstanding the foregoing, the terms of this Section shall not require either party to take any action, or omit to take any action, that it believes in good faith would constitute a violation of law.

13. AVAILABILITY OF RECORDS

To the extent 42 U.S.C. § 1395x(v)(1)(I) (as amended) and regulations promulgated thereunder apply, until the expiration of four (4) years after furnishing services and/or products under this Agreement, Epic will make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and the books, documents, and records of Epic that are necessary to certify the nature and extent of the costs for which You seek reimbursement. In addition, if Epic carries out its duties under this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, such subcontract will contain a similar clause allowing access to the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

14. MISCELLANEOUS

- a. **Governing Law, Forum and Jurisdiction.** This Agreement will be governed and interpreted under the laws of the Jurisdictional State, without reference to its conflicts of laws principles, and any action (including by arbitration, if applicable) arising out of or relating to this Agreement will be brought exclusively in the Jurisdictional State. If Epic institutes the applicable legal action, then the "Jurisdictional State" for such action and all counter claims to such action will be San Mateo County, California. If You institute the applicable legal action, then the "Jurisdictional State" for such action and all counterclaims to such action will be Dane County, Wisconsin. Provided the action is brought in accordance with this Subsection 14(a), Epic and You consent to the personal jurisdiction and venue of the state and federal courts (and arbitration, if applicable) located in the Jurisdictional State.
- b. **Title, Risk of Loss, Shipment and Product Return.** Title to the On Site Equipment will remain with Epic at all times. The risk of loss to the On Site Equipment lies with You. You will be responsible for the On Site Equipment and agree to insure the On Site Equipment for full value. On Site Equipment will be returned to Epic at the end of the Applicable Termination Transition Period and must be in the same condition as when You received it from Epic, except for normal wear and tear. You agree to pay Epic all standard charges for repair, replacement, or refurbishment, if needed, for damage to the On Site Equipment during the Term.
- c. **Severability.** The provisions of this Agreement will be severable, so that if any provision is found unenforceable, it and related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose. However, severability will not apply if it materially changes the benefit of this Agreement to either party.
- d. **No Waiver; No Course of Conduct.** Failure to enforce a provision of this Agreement will not bar future enforcement. The parties' conduct will not be used to interpret this Agreement.
- e. **Purchase Orders.** Epic accepts Your purchase orders only for accounting convenience. Purchase order terms, other than those in a Change Order or other standard form prepared by Epic and signed by You, will not amend this Agreement or otherwise constitute an agreement between the parties.
- f. **Entire Agreement.** The appendices and exhibits to this Agreement, and fully executed Change Orders and all other standard forms prepared by Epic and signed by You (such as electronic signature authorizations and maintenance window request forms), are part of this Agreement. Except as expressly provided in another written agreement between

You and Epic or an Epic Owned Entity, this Agreement is the entire understanding between the parties on its subject matter. Any amendment must be in writing and agreed to by a duly authorized representative of each party.

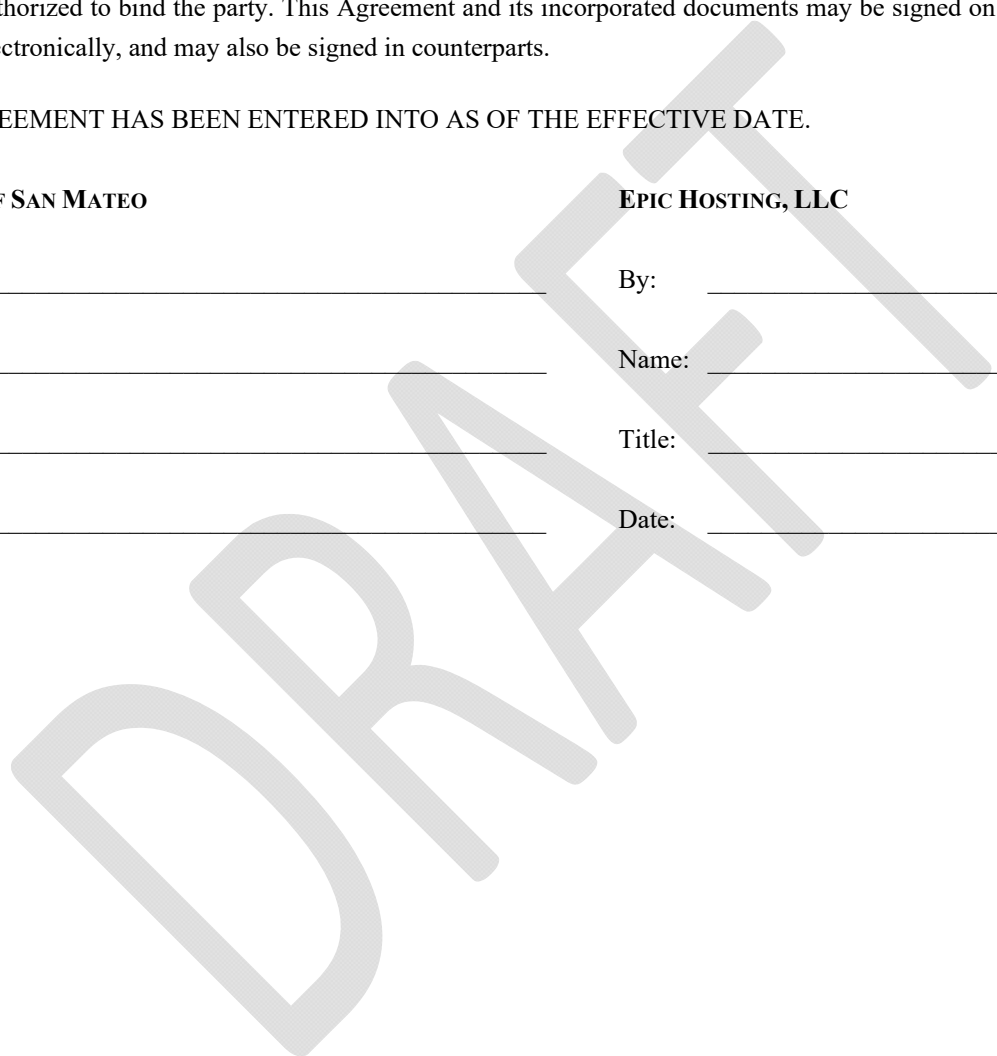
- g. **Independent Contractors; No Joint Employers.** Epic and You are independent contractors and not each other's agents. Epic and You are not joint employers of the other's employees and do not have the right to make employment decisions about the other's employees.
- h. **Interpretation; Authorization; Counterparts.** Headings in this Agreement will not affect the interpretation of this Agreement. In this Agreement, the words "include" and "exclude" and their variants are not words of limitation, and examples are for illustration and not limitation. Each party represents that the individual signing on its behalf is authorized to bind the party. This Agreement and its incorporated documents may be signed on paper, by facsimile or electronically, and may also be signed in counterparts.

THIS AGREEMENT HAS BEEN ENTERED INTO AS OF THE EFFECTIVE DATE.

COUNTY OF SAN MATEO

EPIC HOSTING, LLC

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



APPENDIX A
DEFINITIONS

1. “Change Order” means the form attached to this Agreement as Exhibit 3 or such appropriate substitute form designated by Epic.
2. “Claim” means all claims, demands and actions, and all associated liabilities, damages, refunds and costs, including settlements and attorney’s fees.
3. “Contested Amount” means the amount of an Epic charge that You dispute in good faith in a written notice describing the dispute and provided to Epic by the due date, so long as You have paid all undisputed amounts then due.
4. “Effective Date” means the date that You sign this Agreement.
5. “Epic Hosting Confidential Information” means, except as provided below, all information concerning the Services, including the functionality, operation, benchmarks, security, use, implementation, and support of the Hosting Services and the terms of this Agreement. “Epic Hosting Confidential Information” excludes information: (a) generally available to the public without fault by You, (b) rightfully known by You non-confidentially before Epic first provides You access to such information; (c) independently developed by You without use of any Epic Hosting Confidential Information; or (d) rightfully obtained by You from a third party with the right to disclose it non-confidentially. For the sake of clarity, Epic Confidential Information (as that term is defined in the Epic License) is governed exclusively by the Epic License and is not Epic Hosting Confidential Information.
6. “Epic Parent” means Epic Systems Corporation, a Wisconsin corporation, which is located at 1979 Milky Way, Verona, WI 53593.
7. “Force Majeure Event” means circumstances beyond the reasonable control of You or Epic, including acts of God, fire, acts of a common enemy, war, actual or threatened terrorism, third party criminal acts, civil disturbance, embargo, any law or governmental regulations, labor dispute or network outages.
8. “Hosting Services” means the Epic hosting services defined in the Services Specifications or ordered by You pursuant to an Epic-prepared form. Hosting Services do not include any Professional Services.
9. “Indemnitees” means the applicable party to this Agreement and its Owned Entities, and its and their employees, officers, directors and contractors. Your Indemnitees also include Your Users.
10. “Initial Term” has the meaning provided in Exhibit 1.
11. “Item” has the meaning provided in the Epic License.
12. “M Operating Environment” means the M operating environment software as initially identified either on Exhibit 1 to the Epic License or on Exhibit 1 to this Agreement if Exhibit 1 expressly provides that the M operating environment software is included in the Hosting Services, or such other operating environment software that Epic may specify from time to time.
13. “Maintenance Program” has the meaning provided in the Epic License.

14. "Most Recent Version" means the most recent release of the particular Item. If You are operating the most recent release, including subsequent special updates to that release, then You will be deemed to be operating the Most Recent Version.
15. "On Site Equipment" means the Epic-owned hardware installed at Your site(s) to provide You with the Services under this Agreement.
16. "Owned Entity" means an entity that (a) directly or indirectly owns or controls more than fifty percent of the applicable party, or (b) is more than fifty percent owned or controlled, directly or indirectly, by the applicable party or an entity described in clause (a).
17. "Preceding Version" means the second or third most recent version of an Item released to You.
18. "Production Environment" means the primary production M Operating Environment database containing the live production version of Your Data and the corresponding servers and other equipment provided as part of the Hosting Services (as further described in this Agreement), hosted by Epic, and necessary to deliver the Hosting Services to You. The Production Environment does not include any other additional environments that may be hosted by Epic as part of the Hosting Services, including, test, development, training, reporting, or MyChart nor does it include any corresponding databases, servers or equipment associated with such environments.
19. "Professional Services" means Epic's administration of the Hosting Services as described in Exhibit 2 and Epic's technical support services under Exhibit 5, together with any other Professional Services described in Exhibit 4 that are provided to You by Epic and ordered pursuant to Epic's then-standard form for such purposes.
20. "Program Property" has the meaning provided in the Epic License.
21. "Security Default Period" means the applicable period of time where any of the following has occurred: (a) any period in which You are not in compliance with one or more of Your Security Obligations; (b) any period for which You indicate in Your self-evaluation that You were not in compliance with one or more of Your Security Obligations; (c) any calendar quarter for which You fail to submit a self-evaluation of Your compliance with Your Security Obligations in accordance with Subsection 10(c); and (d) any calendar quarter for which You submit an incomplete, false, or otherwise inaccurate self-evaluation of Your compliance with Your Security Obligations.
22. "Security Obligations" means (a) with respect to You, the Security Guidelines (as defined in Exhibit 5 and including all requirements of Exhibit 10) that were in effect on the first day of the applicable calendar quarter for purposes of Subsection 10(c), and (b) with respect to Epic, the requirements of Exhibit 9. The Security Guidelines and the requirements of Exhibit 9 may be updated by Epic from time to time.
23. "Services" means, collectively, both the Hosting Services and the Professional Services.
24. "Services Specifications" means the document attached as Exhibit 2 to this Agreement as updated in accordance with Section 3 of this Agreement.
25. "Stored Materials" means any data (including Your Data), content, software, code, routines, or other similar materials that You or one of Your Users stores on servers owned or controlled by Epic.
26. "System Performance Credit" means the amount that is equal to one-thirtieth (1/30) of Your monthly Hosting Services fees during the calendar month for which Your County Health CIO requests the credit.

27. “Technical Go-Live” is the environment live date prior to Your first go-live, which occurs when the production system is first made available to You to begin loading the first live/real data into Your production system. Technical Go-Live typically occurs three to four months prior to the date You have planned for Your first go-live event.
28. “Term” means the Initial Term and any extensions in accordance with Subsection 4(a). Any Applicable Termination Transition Period will be considered to be within the Term.
29. “Uncontested Amount” means an amount charged by Epic to You that is not then a Contested Amount.
30. “Update” means a release of or patch to an Item (with error corrections, enhancements, or extensions) that Epic Parent generally makes available free of charge to its similarly situated customers that are then participating in the Maintenance Program under a written agreement with Epic Parent.
31. “Your Data” means data that meets all the following criteria: (a) the data belongs to You or Your Users, and (b) the data was stored by You or Your Users on Epic-owned servers in accordance with the terms of this Agreement during the Term.
32. “Your Hosting Confidential Information” means, except as provided below, all Your Data stored using the Program Property hosted by Epic as part of the Hosting Services, Your Protected Health Information (as defined in Exhibit 8), and Your confidential information concerning Your business strategies and finances. “Your Hosting Confidential Information” excludes information that: (a) is generally available to the public without fault by Epic, (b) is rightfully known by Epic non-confidentially before Epic’s first access to such information; (c) is independently developed by Epic without use of any Your Hosting Confidential Information; (d) is rightfully obtained by Epic from a third party with the right to disclose it non-confidentially; (e) relates to the identity of Program Property or other third party software that You are using with the Hosting Services, the types and configuration of hardware or operating systems on which the Program Property or Hosting Services is operated, the identity of software or hardware systems with which the Program Property interfaces for You, or any customization relating to the Hosting Services; or (f) an Epic Owned Entity has expressly agreed with You to host as part of a specific product offering (e.g., Cosmos).
33. “Your User” means any individual that is permitted to access the Program Property under the Epic License.

Hosting Services Agreement - List of Exhibits



<u>EXHIBIT</u>	<u>DESCRIPTION</u>
1	Hosting Pricing Terms
2	Services Specifications
3	Form of Change Order
4	Hosting Standard Hourly Rates
5	Technical Support for Hosting Services
6	
7	
8	Business Associate Exhibit
9	Epic Hosting Information Security Practices
10	Your Responsibilities for Information Security
11	Travel Policy

Exhibit 1 - Hosting Pricing Terms

1. Hosting Services Fees.

- a. An initial base fee for Hosting Services of \$82,300 per month applies beginning on [REDACTED]
- b. In addition to the base fee for Hosting Services, a connection fee for Hosting Services also applies [REDACTED]
[REDACTED]
[REDACTED] As of the Effective Date, the Epic fees for Epic Application Connections, [REDACTED] are as follows:

[REDACTED]

[REDACTED]

You will use reasonable efforts to inform Epic at least thirty (30) days in advance of any planned change to Your use of the Hosting Services that might result in an increase [REDACTED] as compared to Your prior use, and at least ninety (90) days in advance of any such change that might result in such an increase [REDACTED] even if the change does not require an increase to the level of Epic Application Connections.

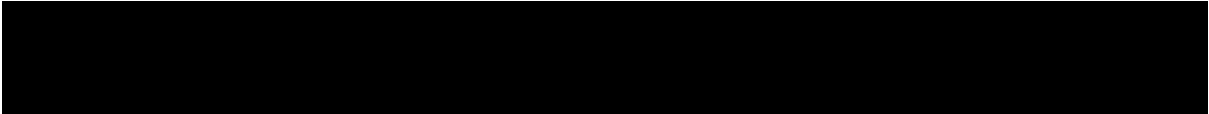
[REDACTED]

- d. The Hosting Services fees are payable monthly in advance and subject to increases in accordance with the Agreement.

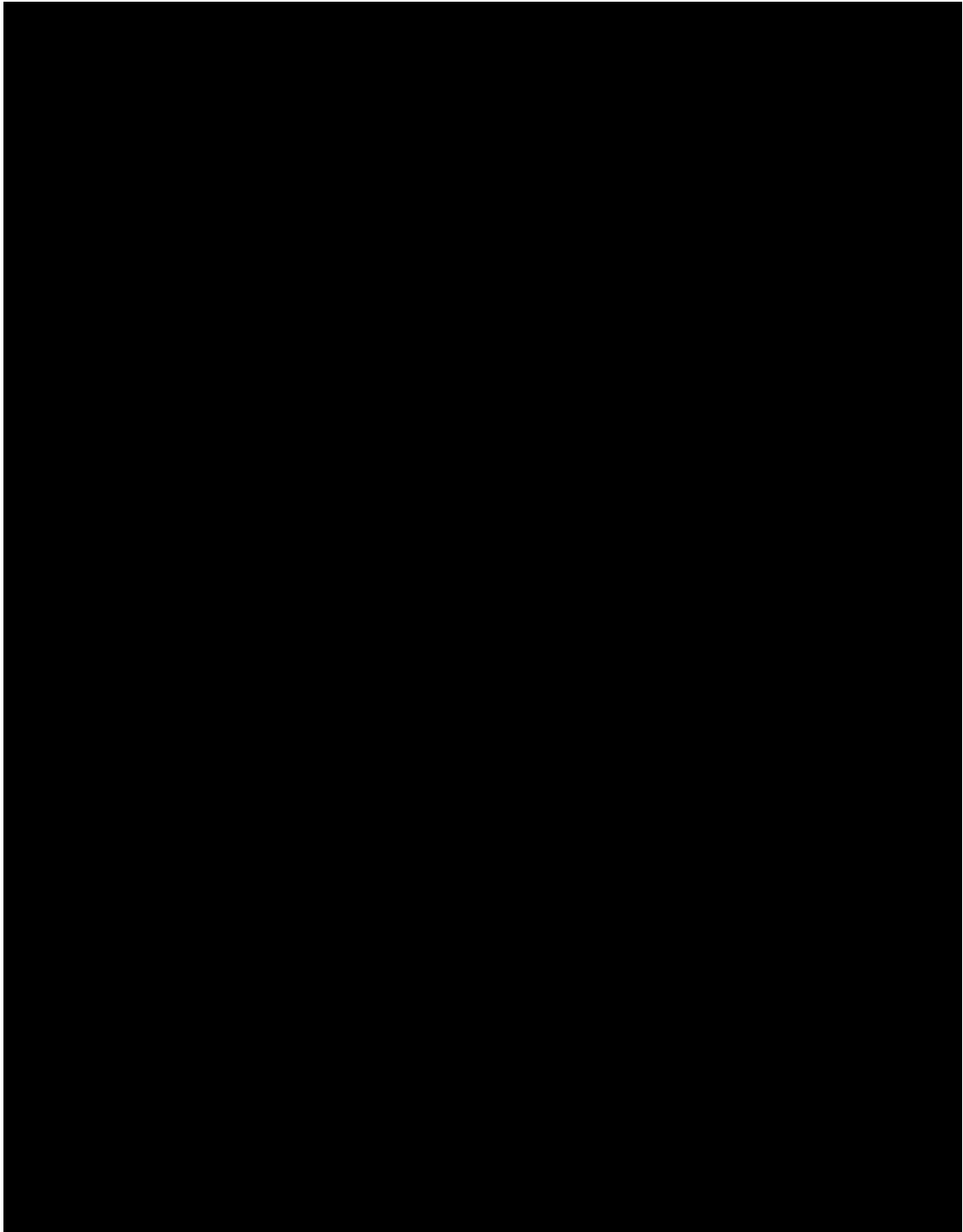
2. Assumptions

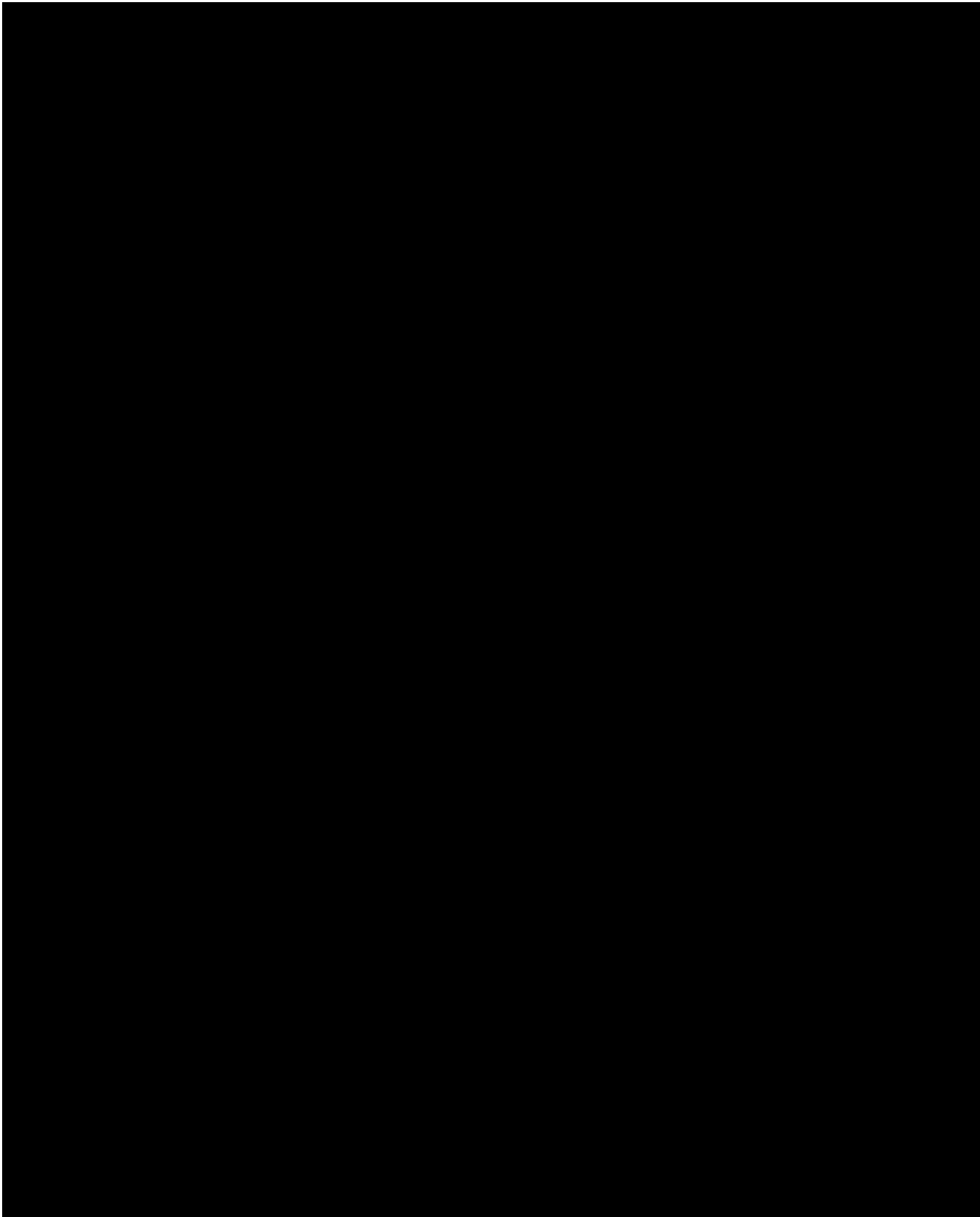
- a. The "Initial Term" means the period beginning on the Effective Date and ending on the earlier of sixty (60) months after the Technical Go Live or seventy-eight (78) months after the Effective Date.

[REDACTED]



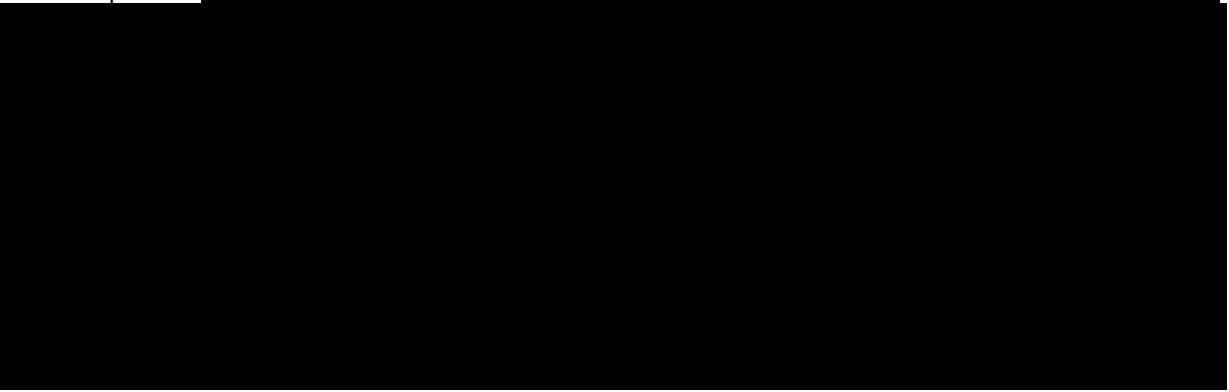
- c. The Hosting Services fees are for Epic’s base hosting offering for the Hosting Services as described in the Services Specifications as of the Effective Date.
- d. The initial Hosting Services fees assume use of the Program Property listed below, subject to the other assumptions set forth in this Exhibit 1. If additional applications or modules are used in the future or Your use exceeds any assumption set forth in this Exhibit 1, additional fees may apply.



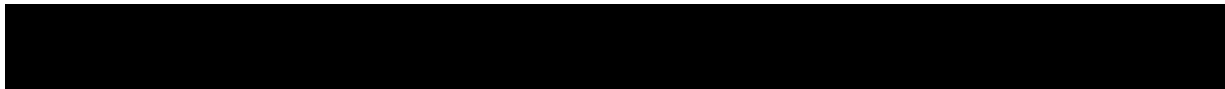
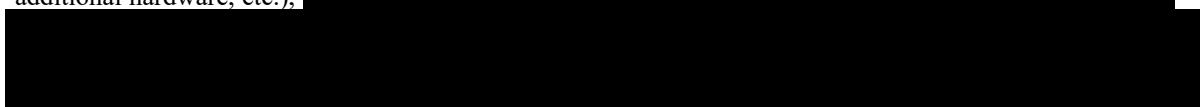


- h. The Hosting Services fees are subject to increases upon installation of Program Property version upgrades beyond Epic November 2023 where You or Epic anticipate You will be using additional features or

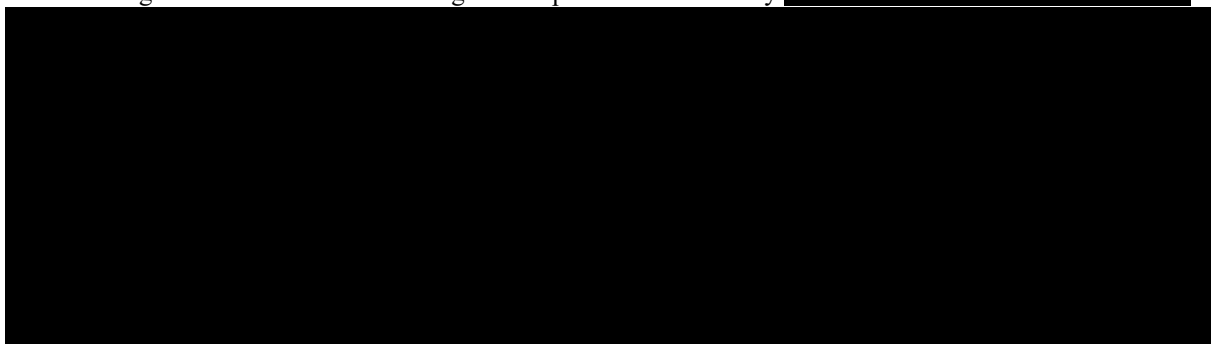
functionality that would require a higher level of infrastructure support for any of the Hosting Services components.



- j. The Hosting Services fees are subject to increases to reflect changes in future versions of the Program Property that are made due to regulatory changes and that have an impact on the hardware, software, telecommunications, network or other similar infrastructure components used by Epic to provide the Services (e.g., the required regulatory change requires more processing power, more storage, additional licenses, additional hardware, etc.),



- l. The Hosting Services fees include hosting of the Epic environment only.



- m. Hardware used to provide the Hosting Services will be purchased and owned by Epic; software licenses used by Epic to provide the Hosting Services will be licensed by Epic, may be used solely with the Program Property, and are non-transferable.

Hosting Services Descriptions

Epic Base Offering

Primary Data Center Production Infrastructure Components

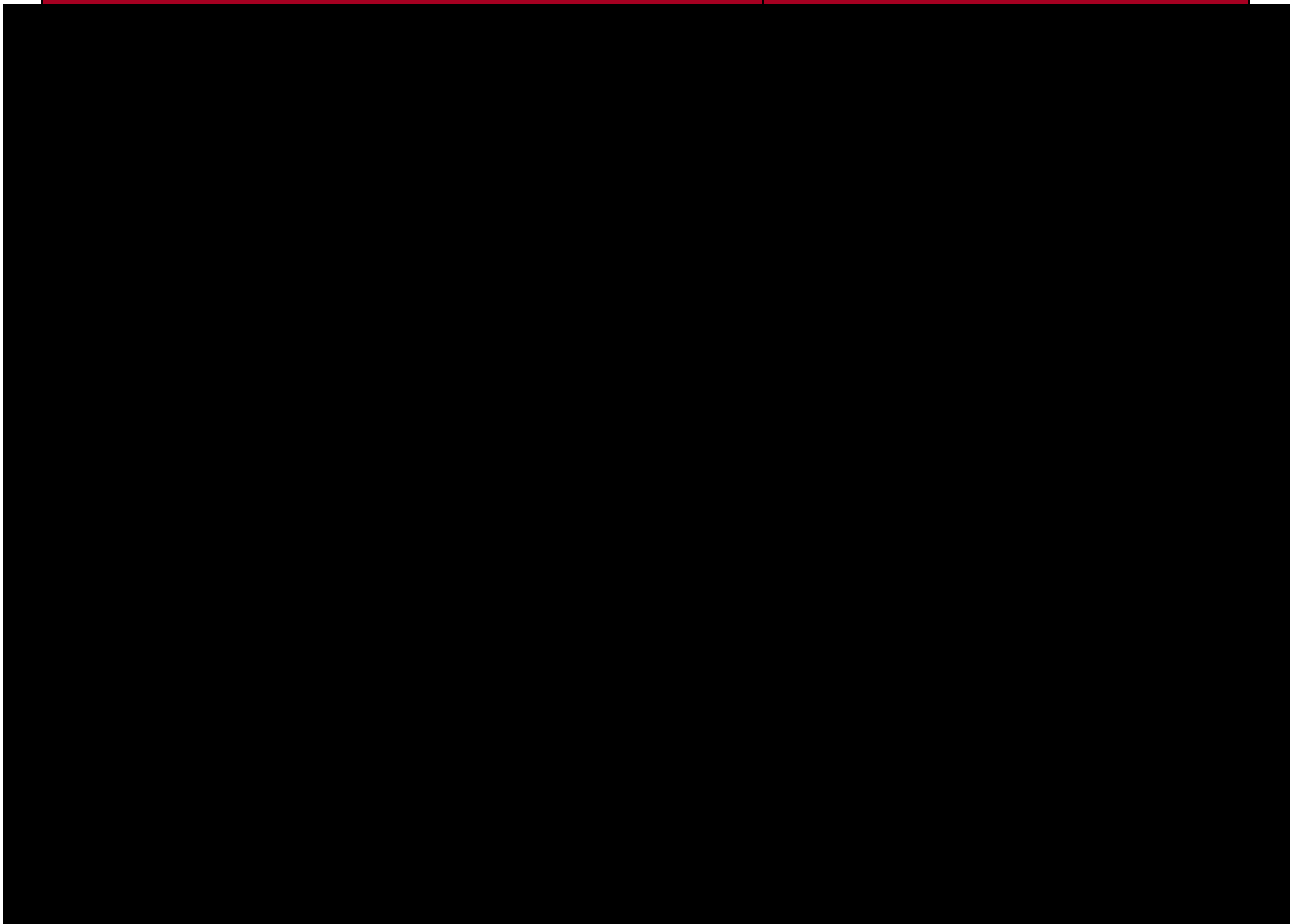
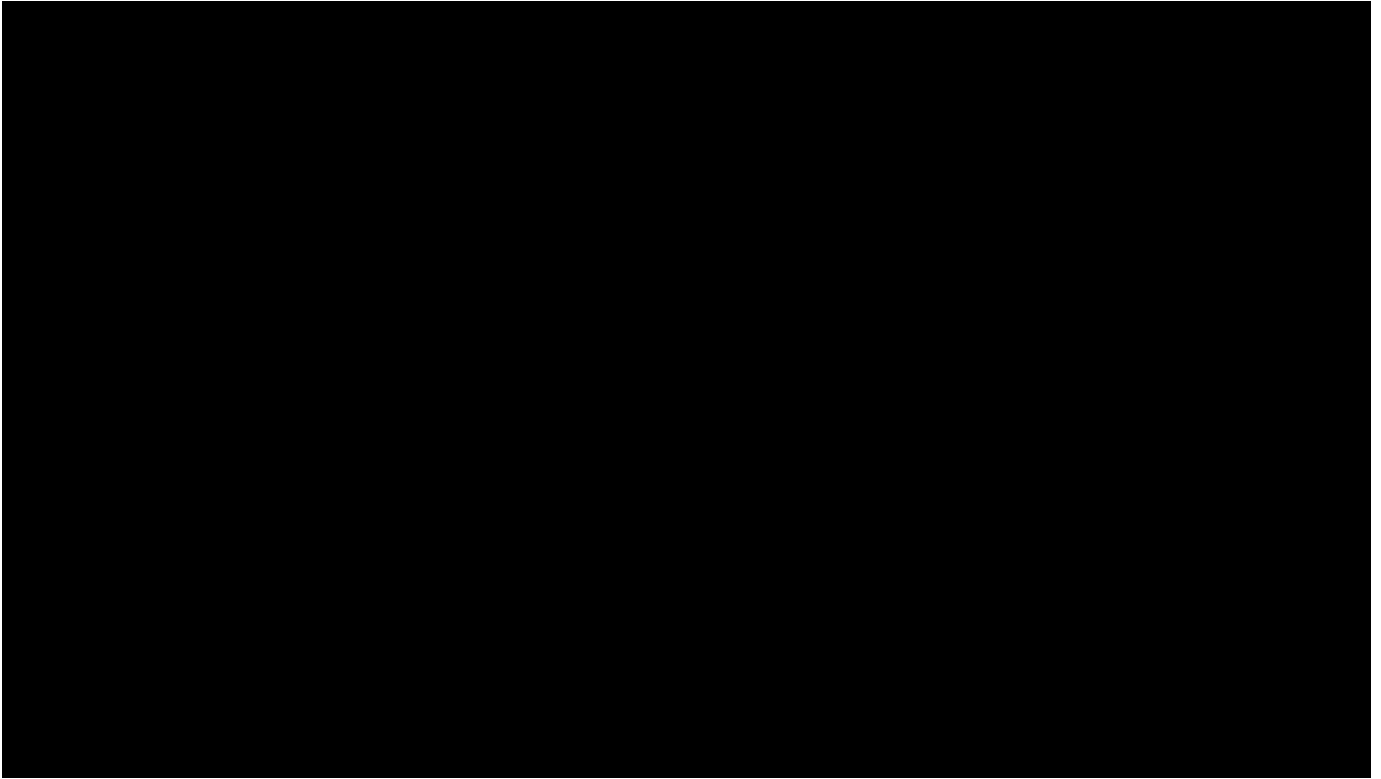


Exhibit 2

Services Specifications for Hosting Services

Secondary Data Center Production Infrastructure Components



Other Components

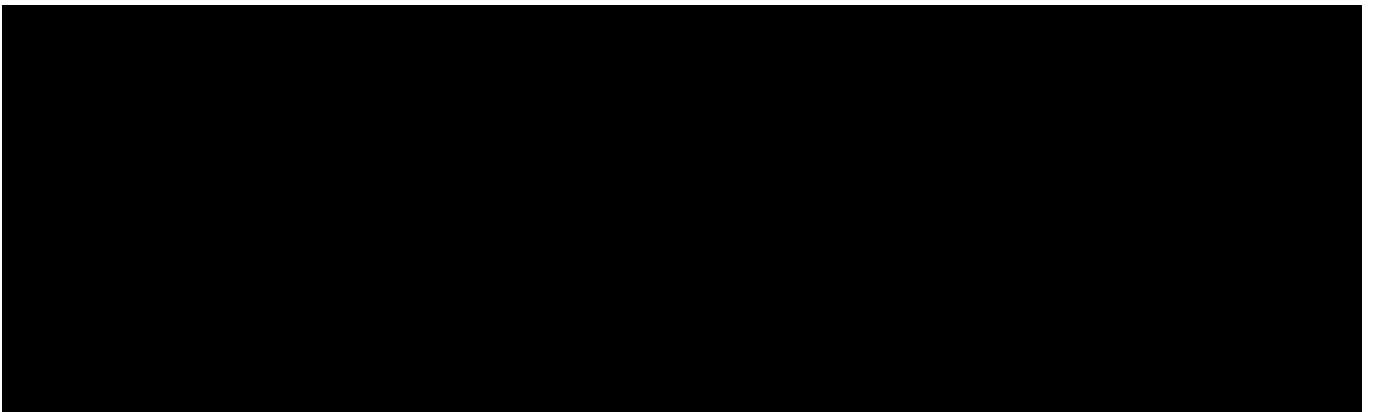
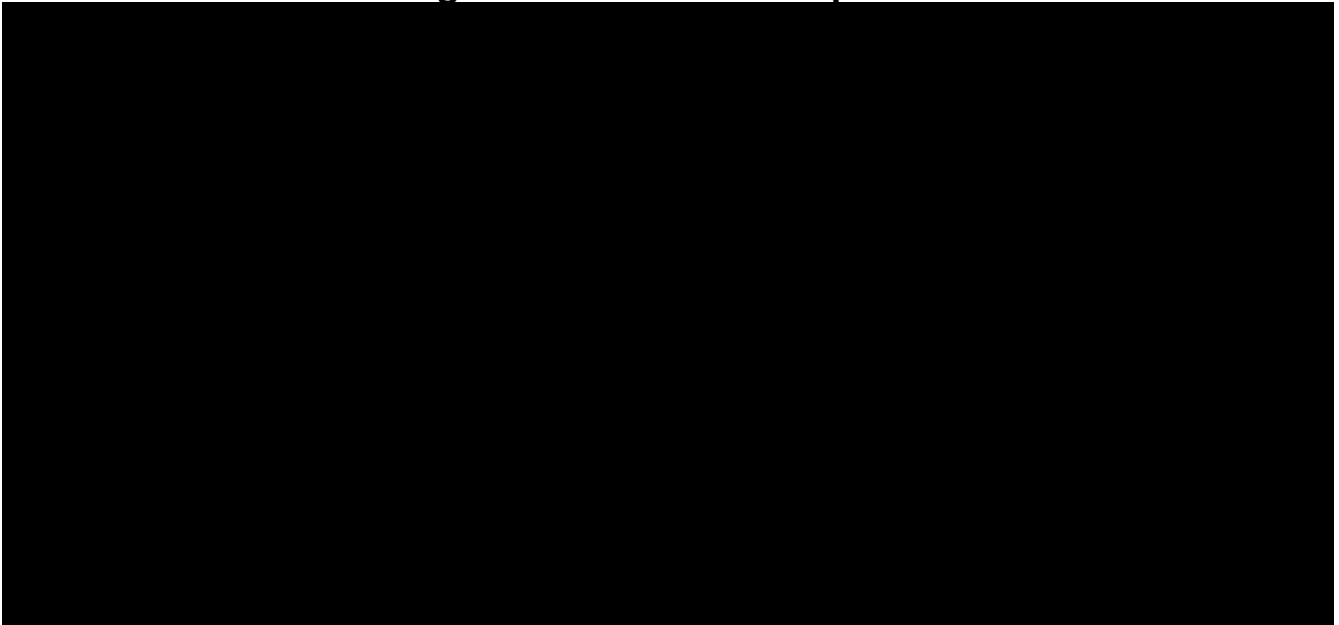


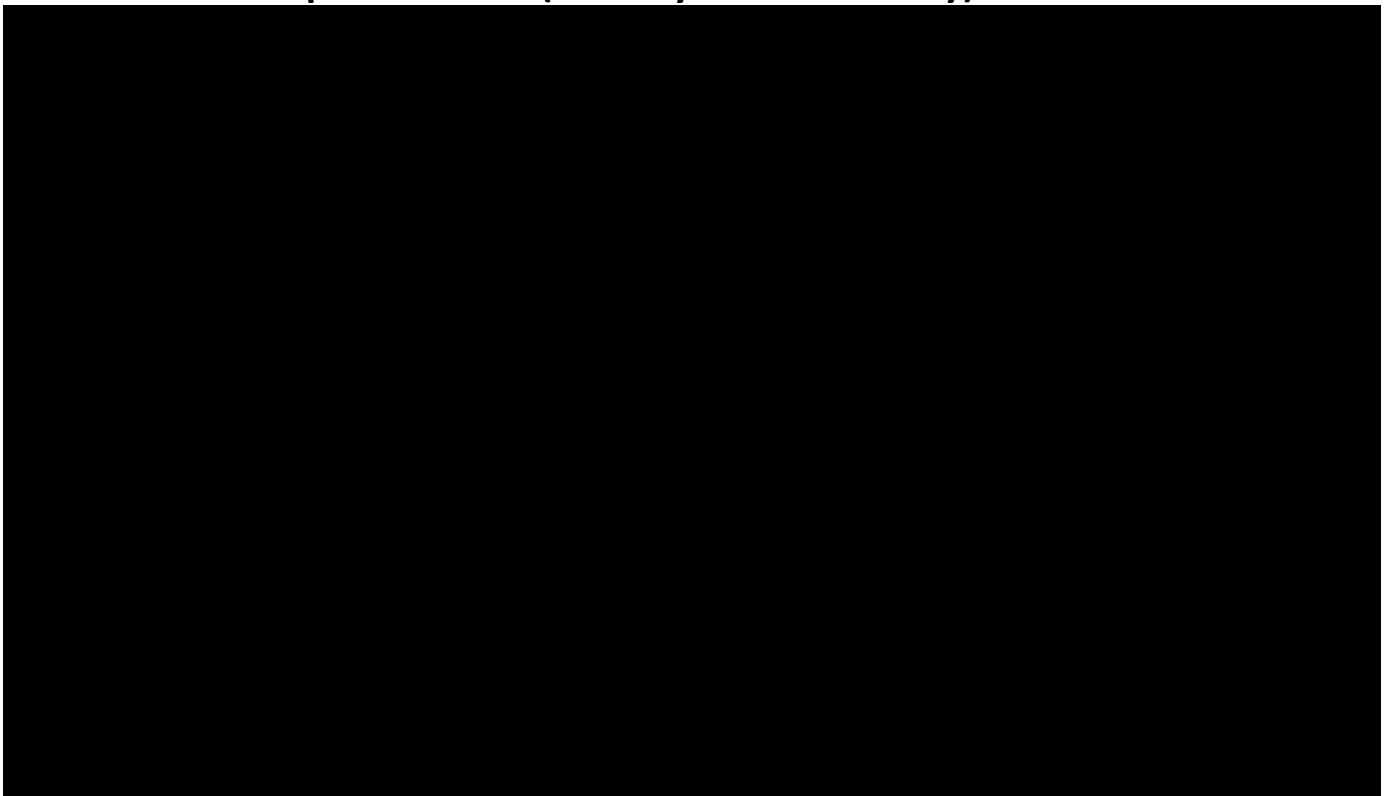
Exhibit 2

Services Specifications for Hosting Services

Infrastructure Licensing for Data Center Components



Data Center Specifications (Primary and Secondary)



Staffing

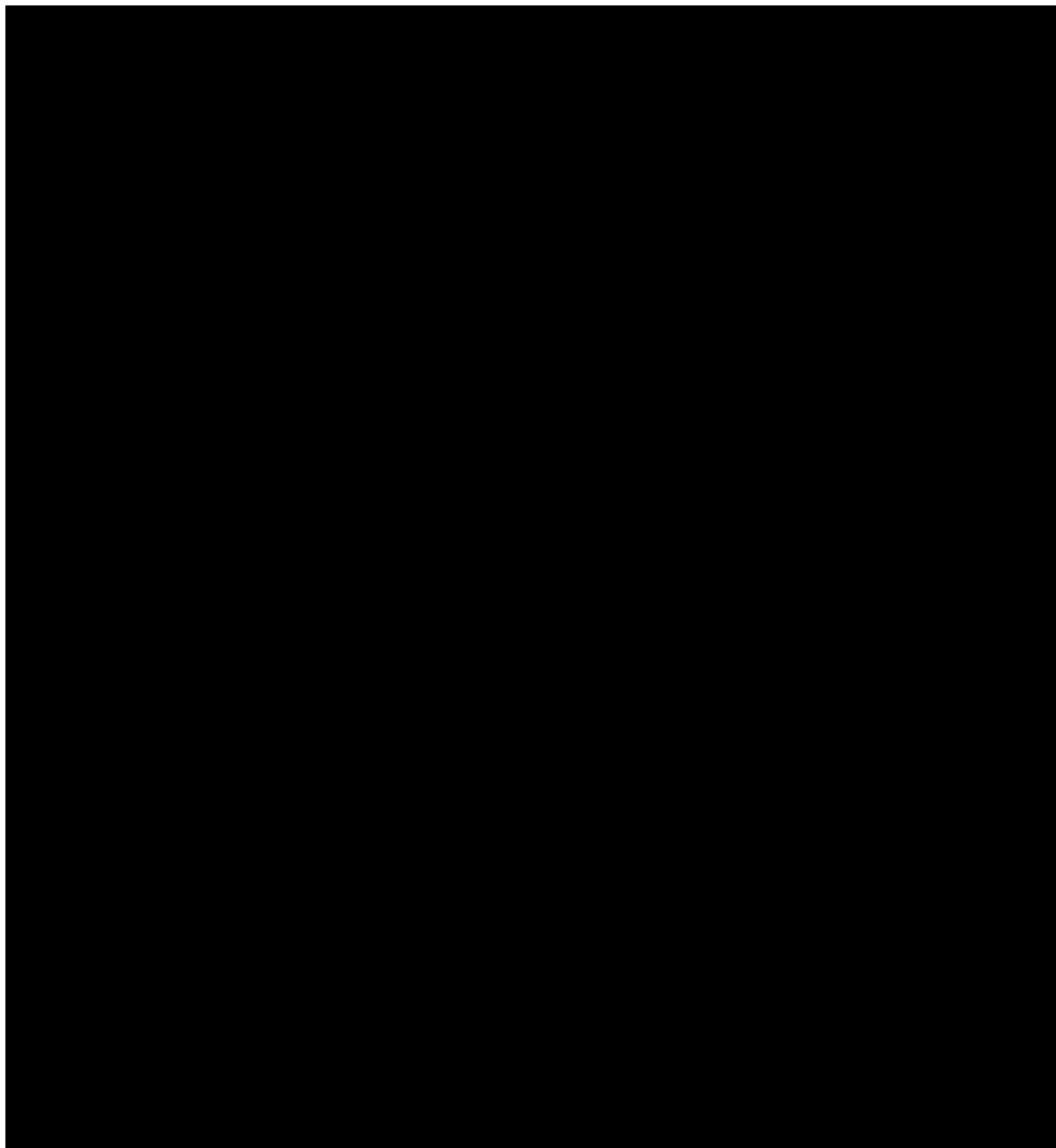


Exhibit 2

Services Specifications for Hosting Services

Epic Core Infrastructure On Site Equipment

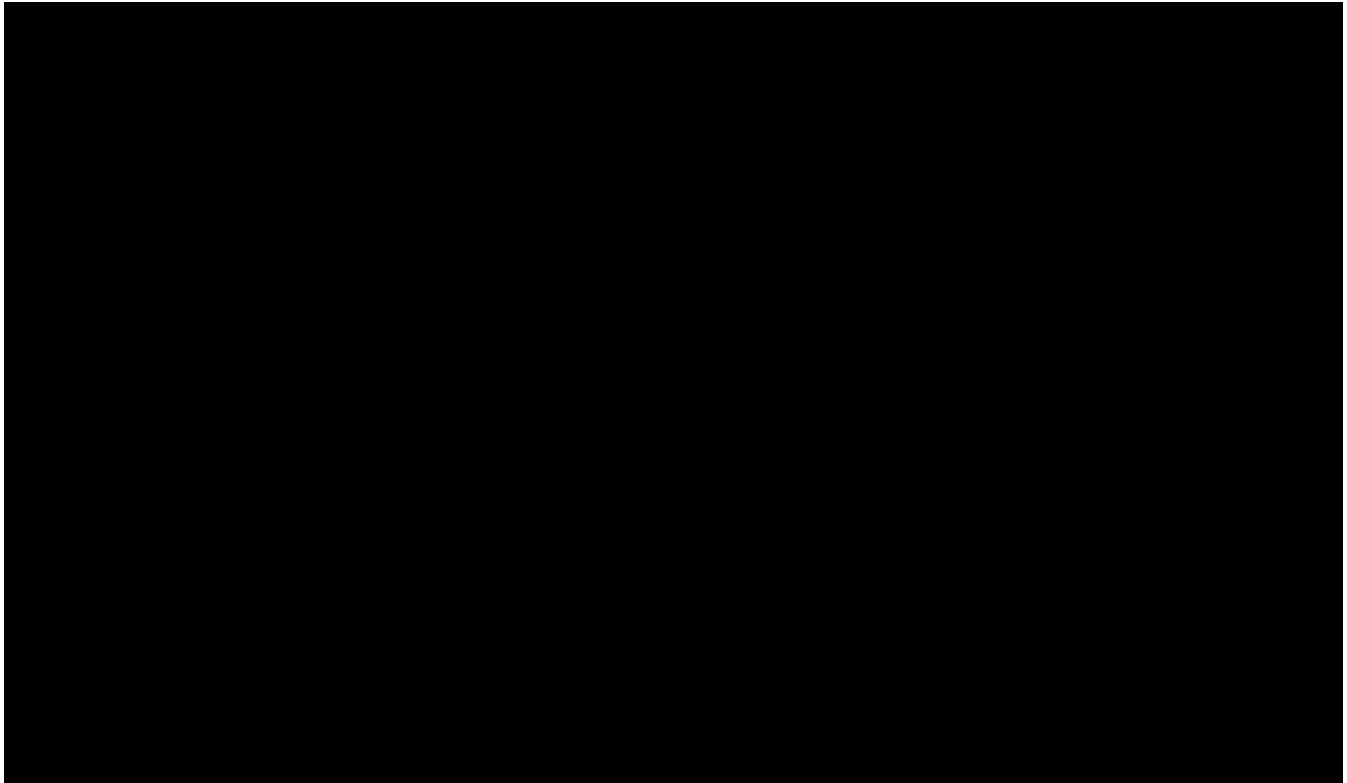


Exhibit 2

Services Specifications for Hosting Services

Additional assumptions

Customer-maintained components

The following is a non-exhaustive list of components are hosted and maintained by You. [Redacted]

Component	Description
[Redacted]	[Redacted]
End-user devices [Redacted]	Your IT team is responsible for procuring and deploying end-user devices.
Deployment of [Redacted] over the application presentation tier receiver	The [Redacted] client is currently accessed remotely [Redacted] deployed by Your IT team.
Deployment of full client applications [Redacted]	[Redacted] You deploy and manage the installation of these clients on the local end-user devices.
Deployment of mobile applications [Redacted]	Mobile applications are downloaded from the mobile application store and configured by either end users or Your IT team. [Redacted]
Inter-facility WAN and facility LAN, including external VPN access to Your WAN	[Redacted]
Automated dispensing systems [Redacted]	[Redacted]

Exhibit 2

Services Specifications for Hosting Services

Staffing by You

The following is a non-exhaustive list of roles related to the Hosting Services that are staffed by You (in addition to other necessary implementation and ongoing application maintenance roles).

<i>Role</i>	<i>Description</i>
Your Technical Project Management	
End-User Device Deployment	
WAN, LAN and Directory Service Administration	
Interface and Conversion Analysts	
Security Analysts	
Support of systems not hosted by Epic	
First Line Help Desk for end users	

Licensing

<i>Component</i>	<i>Licensing (Epic Parent or third-party)</i>	<i>Description</i>
Infrastructure Licensing for Data Center Components		
KB SQL (for back-end searches and Clarity)		not part of Hosting Services.
Windows end-user devices		Windows OS is required for workstations. Thin device and zero clients may be options
Certain other licenses for an Epic system		
Epic Parent software	From Epic Parent	Governed by a separate agreement between You and Epic Parent; license and use of Program Property is not part of Hosting Services.
M Operating Environment	Unless expressly stated otherwise in Exhibit 1, license and use of the M Operating Environment is not included in the Hosting Services and is	

Exhibit 2

Services Specifications for Hosting Services

<i>Component</i>	<i>Licensing (Epic Parent or third-party)</i>	<i>Description</i>
		instead sublicensed from Epic Parent.
Third party content [REDACTED]	[REDACTED]	Typically governed by separate agreements with third parties; [REDACTED] License and use is not part of Hosting Services.

Third-Party Materials

The following example third-party systems are not included as systems hosted or administered by Epic (even if the systems are provided by vendors of included systems). This list is not exhaustive.

Component

[REDACTED]



Change Order – Hosting Services

Date Prepared: _____

Requestor: _____

SR#:

XWR #:

SLG#:

TLP #:

Customer: _____

Project: _____

Epic Hosting, LLC Authorized Signature: _____ Date: _____

Quotation

Description of Additional Hosting Services*

Cost

\$

Total Initial Cost:

\$ (US\$)

Payment Schedule:

*Please note that additional terms apply with respect to requests for Epic to store third party software or data in connection with the Hosting Services. Please see the attached Third Party Content Upload Request Form, if applicable.

Acceptance

I authorize the work to begin as specified above. Epic will invoice Customer, and Customer agrees to pay, the fees list above on the schedule described above. I understand that (a) if specifications change, prices may change, (b) the terms of the Hosting Services Agreement between Epic and Customer, including without limitation all assumptions in Exhibit 1 and Exhibit 2, as modified by any prior fully executed Change Order or amendment, apply to this Change Order, (c) travel costs (if any), out of pocket expenses and any other expenses that may be incurred in connection with this project, such as hardware costs, costs for Customer's organization's resources, consultant fees, etc., are not included in this quotation, except as expressly described above, and (d) any fees listed above do not include applicable state, federal, or local taxes. I have authority to authorize and sign this Change Order on behalf of You.

I understand that the charges associated with this project are in addition to any previous budget and all hosting services fees and other fees payable under the Hosting Services Agreement.

Customer Signature: _____ Date: _____

Print Name: _____

P.O. Number: _____ (If applicable)

This Change Order will expire if not signed and returned to Epic within sixty (60) days of the date it was prepared by Epic.

EXHIBIT 4
EPIC HOURLY RATES
HOSTING SERVICES AGREEMENT

Services

**Hourly Billing Rate
(at Epic)**

**Hourly Billing Rate
(on Site)**

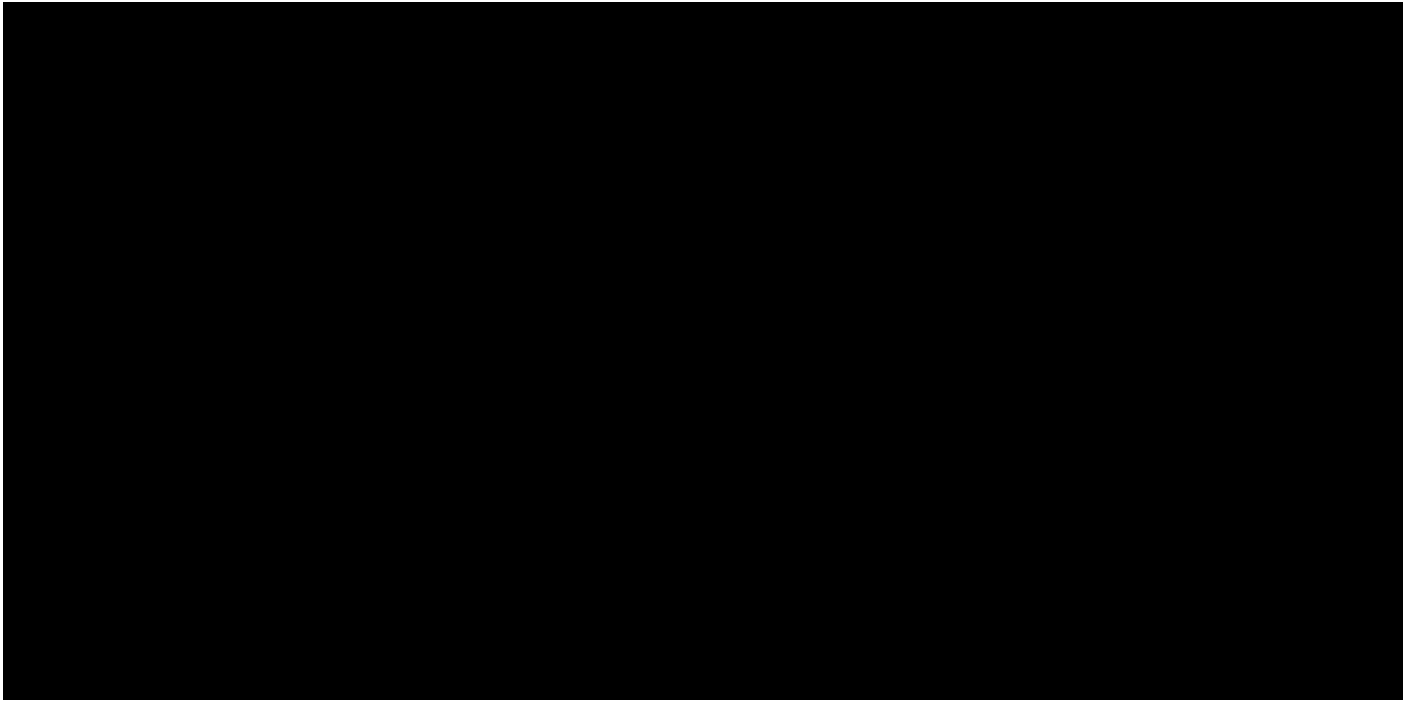


Exhibit 5

Technical Support for Hosting Services

1. TECHNICAL SUPPORT

a. Database and Infrastructure Management.

[REDACTED]

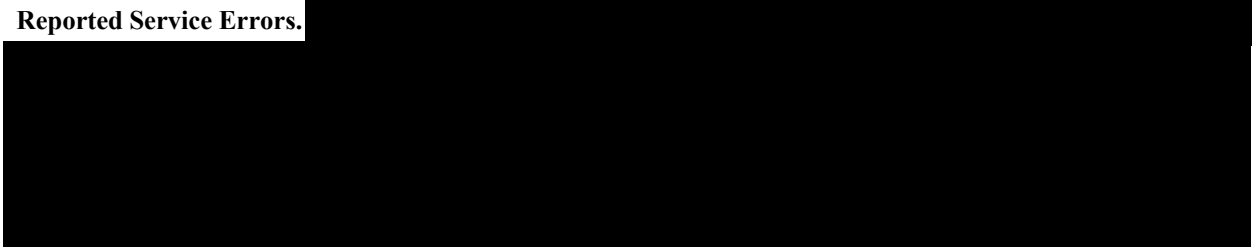
b. Application Updates; Supported Versions. Epic will work with You to establish a regular maintenance window for Your Hosting Services related software updates (e.g., the Program Property, software components of the Hosting Services). Epic will perform the installation of Updates to the Program Property in Your Production Environment following the completion of Your internal testing. If Epic identifies a potential security risk to Epic's hosting operations, You agree to cooperate with Epic to promptly test and install any Updates to the Program Property and implement any related configuration or operational changes requested by Epic to mitigate such risk.

[REDACTED]

c. Operational Hosting Services Support. Epic provides telephone consultation and assistance support to You through its Hosting Services technical support staff at any time, 24 hours per day and 7 days per week.

[REDACTED]

d. **Reported Service Errors.**



e. **Support Response Guidelines.** Epic will use commercially reasonable efforts to resolve (either by reasonable workaround, correction, or otherwise) Service Errors as described below.

SERVICE ERROR SEVERITY	EPIC RESPONSE
<p>CRITICAL: Severity 1</p> <ul style="list-style-type: none"> The Hosting Services are down. 	
<p>SERIOUS: Severity 2</p> <ul style="list-style-type: none"> Hosting Services are materially impacted and there is no reasonable workaround or correction of the Service Error currently available. 	
<p>MODERATE: Severity 3</p> <ul style="list-style-type: none"> Hosting Services are slightly impacted; or Hosting Services are materially impacted and a reasonable workaround or correction of the Service Error is currently available. 	
<p>LOW: Severity 4</p> <ul style="list-style-type: none"> Functionality of Hosting Services does not otherwise match documented Services Specifications. 	

f. **Measuring Response Time.** For all Severity 1 and Severity 2 Service Errors, You must clearly inform Epic of such suspected Service Error and severity level by telephone.



[REDACTED]

g. **Escalation.** If Epic does not respond within the time frames set forth above, You may use the escalation procedures as provided in this paragraph. [REDACTED]

[REDACTED]

2. OTHER ASSUMPTIONS

a. **Authorized Use.** You are responsible for the identification and authentication of Your Users. You must approve all of Your Users, and control against unauthorized access to the Hosting Services. Epic is not responsible for any harm caused by Your Users, including their unauthorized access due to Your failure to terminate access to unauthorized users in a timely fashion. [REDACTED]

b. **Acceptable Use Limitations on Your Use of the Hosting Services.** [REDACTED]

[REDACTED] You agree that You and Your Users will not do any of the following (collectively, the “Acceptable Use Guidelines”):

[REDACTED]

[REDACTED]

- derive specifications from, reverse engineer, reverse compile, disassemble, translate, record, or create derivative works based on the Hosting Services;
- enter data using the Hosting Services that infringes the rights of other third parties;

[REDACTED]

Security (this subset of the Acceptable Use Guidelines is collectively referred to as the “Security Guidelines”)

- use the Hosting Services in a manner that (i) is not contemplated by this Agreement or the Epic License and (ii) materially delays, impairs or interferes with system functionality for others or that materially compromises the security or integrity of any data, equipment, software or system input or output used as part of the Hosting Services;
- provide access to or use of the Hosting Services to anyone other than Your Users, including that You will not resell, sublicense, lease, encumber, copy or otherwise transmit the Hosting Services to anyone other than Your Users;
- use the Hosting Services, or any part thereof, for any unlawful purpose;
- perform or disclose the results of security, benchmark or penetration testing of Epic's Hosting Services environment or associated infrastructure; or

[REDACTED]

Use of or access to the Hosting Services in violation of the Acceptable Use Guidelines or other terms of this Agreement is strictly prohibited. Permission to access or use the Hosting Services may be limited or suspended immediately if, in Epic's sole discretion, You have breached the Acceptable Use Guidelines [REDACTED]

[REDACTED]

and that Epic is entitled to injunctive relief to prevent such violation. Epic may update the Acceptable Use Guidelines from time to time by providing them in writing to You.

c. **Non-Hosting Errors.**

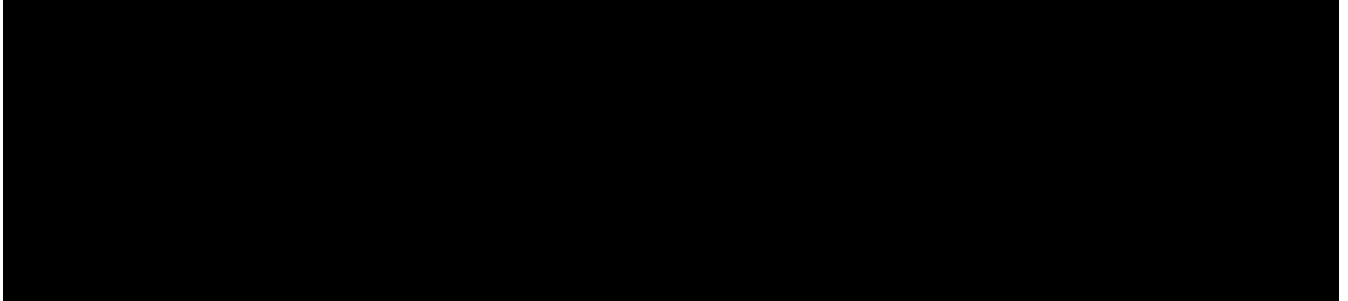
[REDACTED]

d. **Use of Data.** Epic may compile statistical and other information related to the performance, operation, security and use of the Services and for research and development of Epic products and services; provided, however, that such statistical and other information will not involve the use or disclosure of any Protected Health Information.

Exhibit 6
Hosting Services Availability

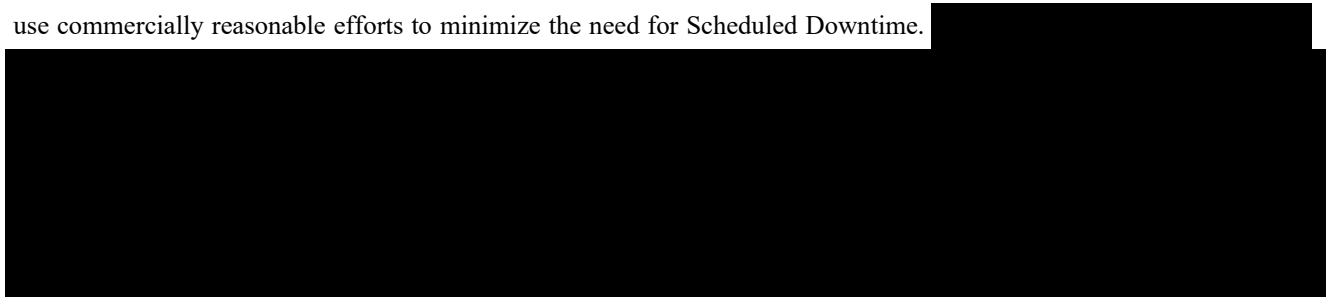
Epic will use commercially reasonable efforts to provide the Hosting Services with the goal of maximizing the availability of the Program Property to Your Users in Your Production Environment.

1. MEASURING HOSTING SERVICES AVAILABILITY AND OUTAGES

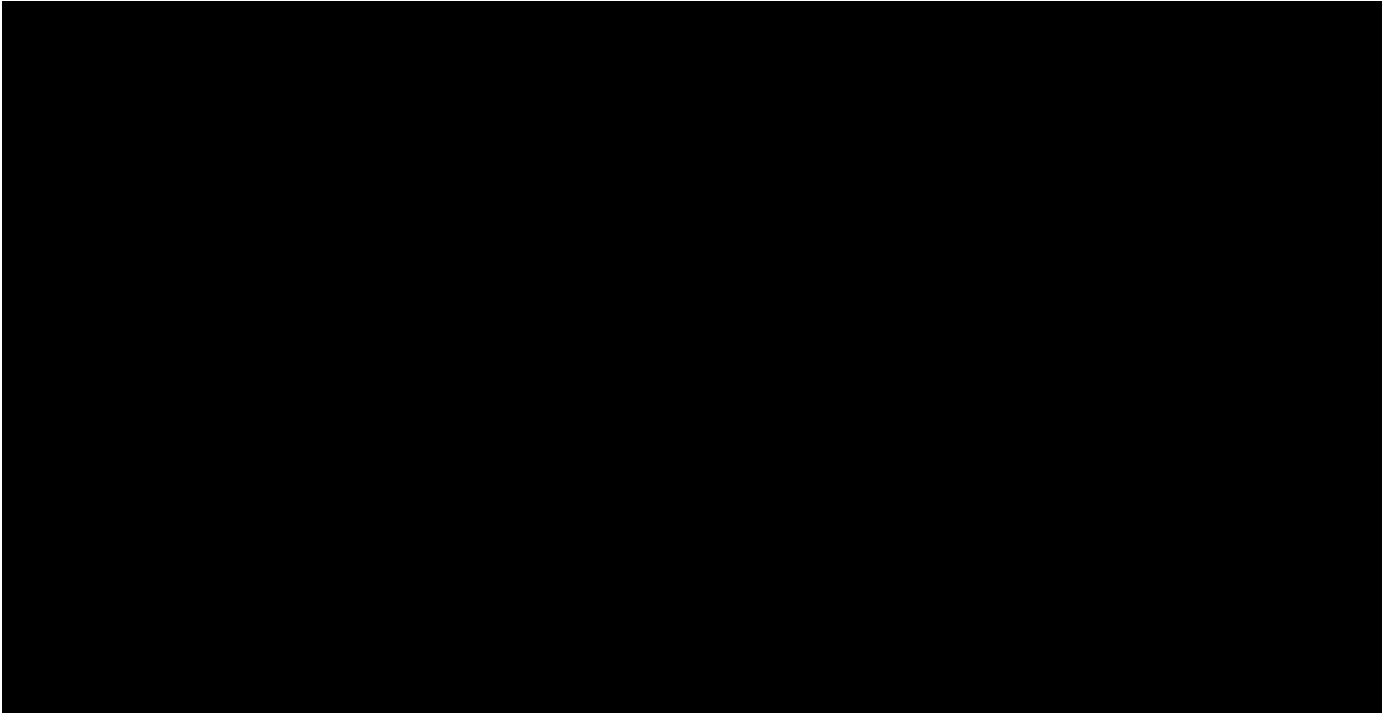


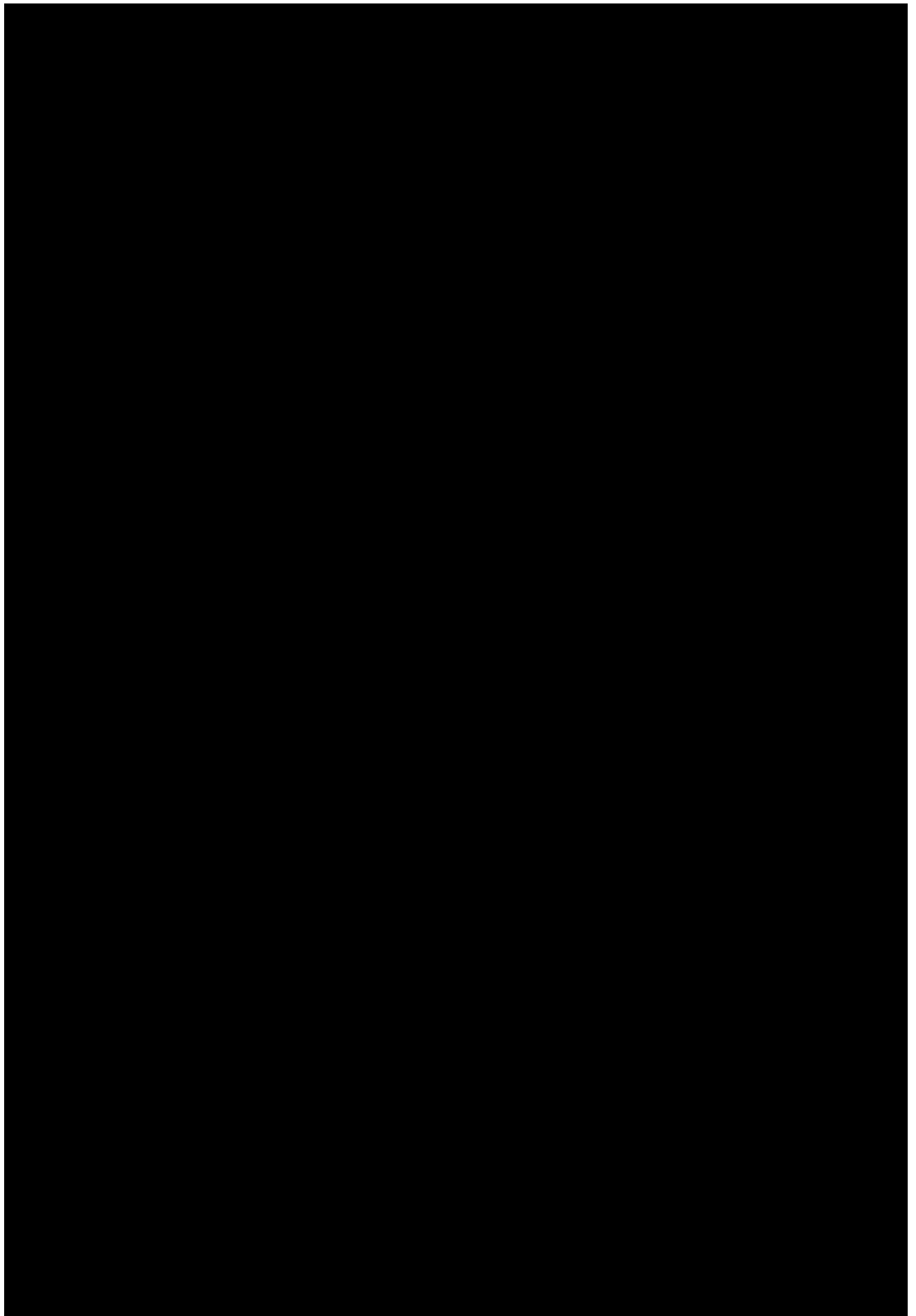
2. SCHEDULED DOWNTIME

Epic will work with You, as reasonably practicable, to arrange for Scheduled Downtime during non-peak hours and will use commercially reasonable efforts to minimize the need for Scheduled Downtime.



3. OUTAGES





4. DEFINITIONS

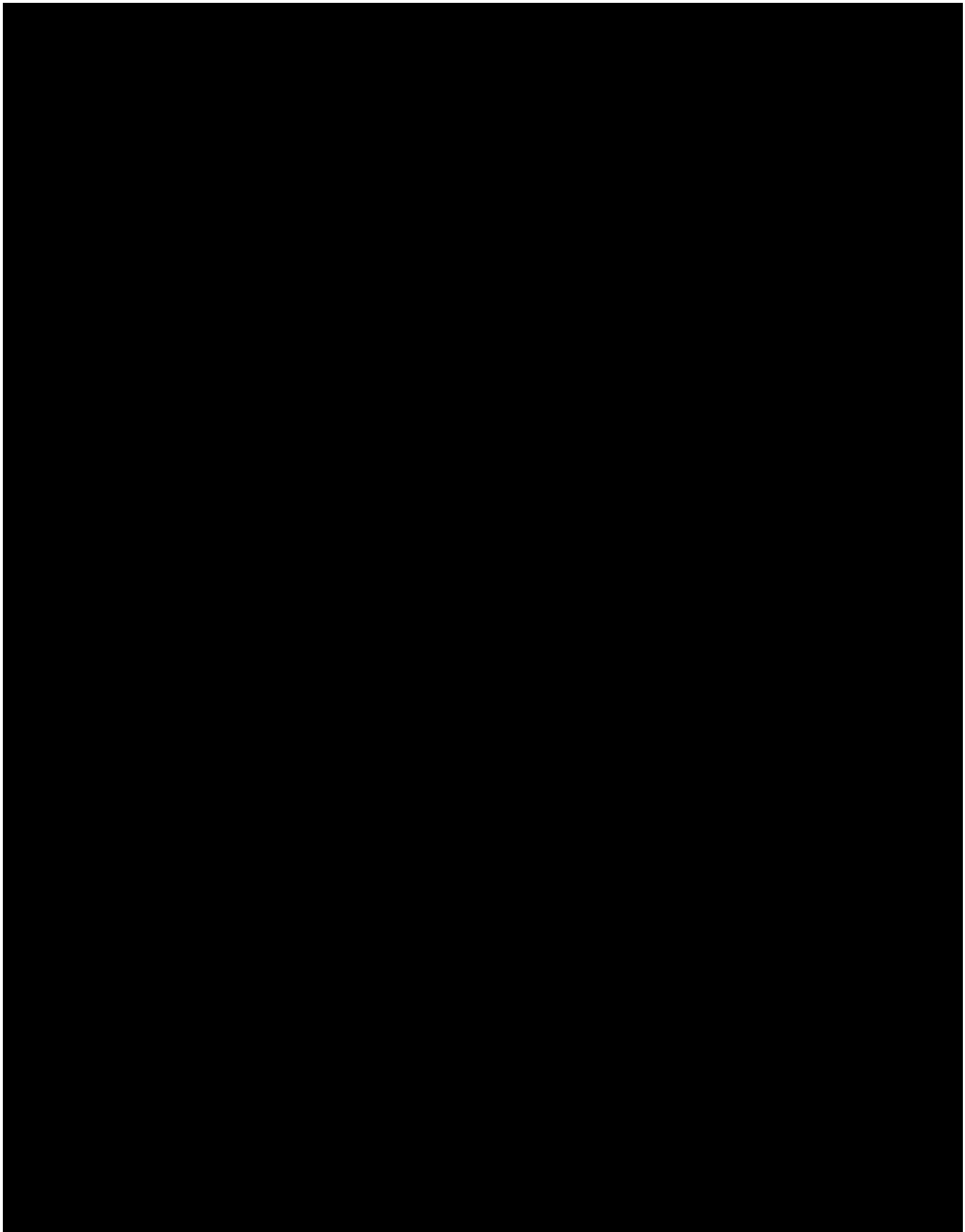
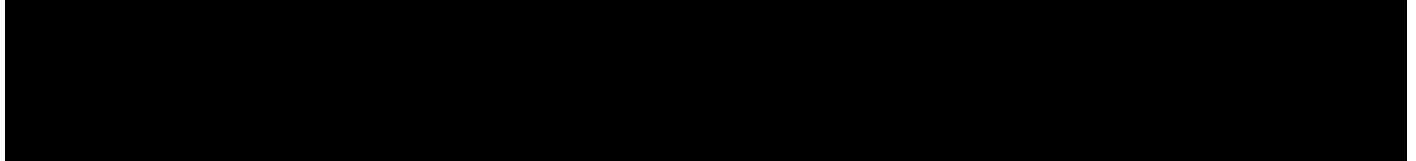


Exhibit 7
Application Response Time Guidelines

1. GENERAL

Epic designs the Hosting Services and related hardware configurations to be fast and enable appropriate response times consistent with the guidelines set forth below, regardless of the distance between the data center and Your Users.



2. SYSTEM PERFORMANCE CREDITS

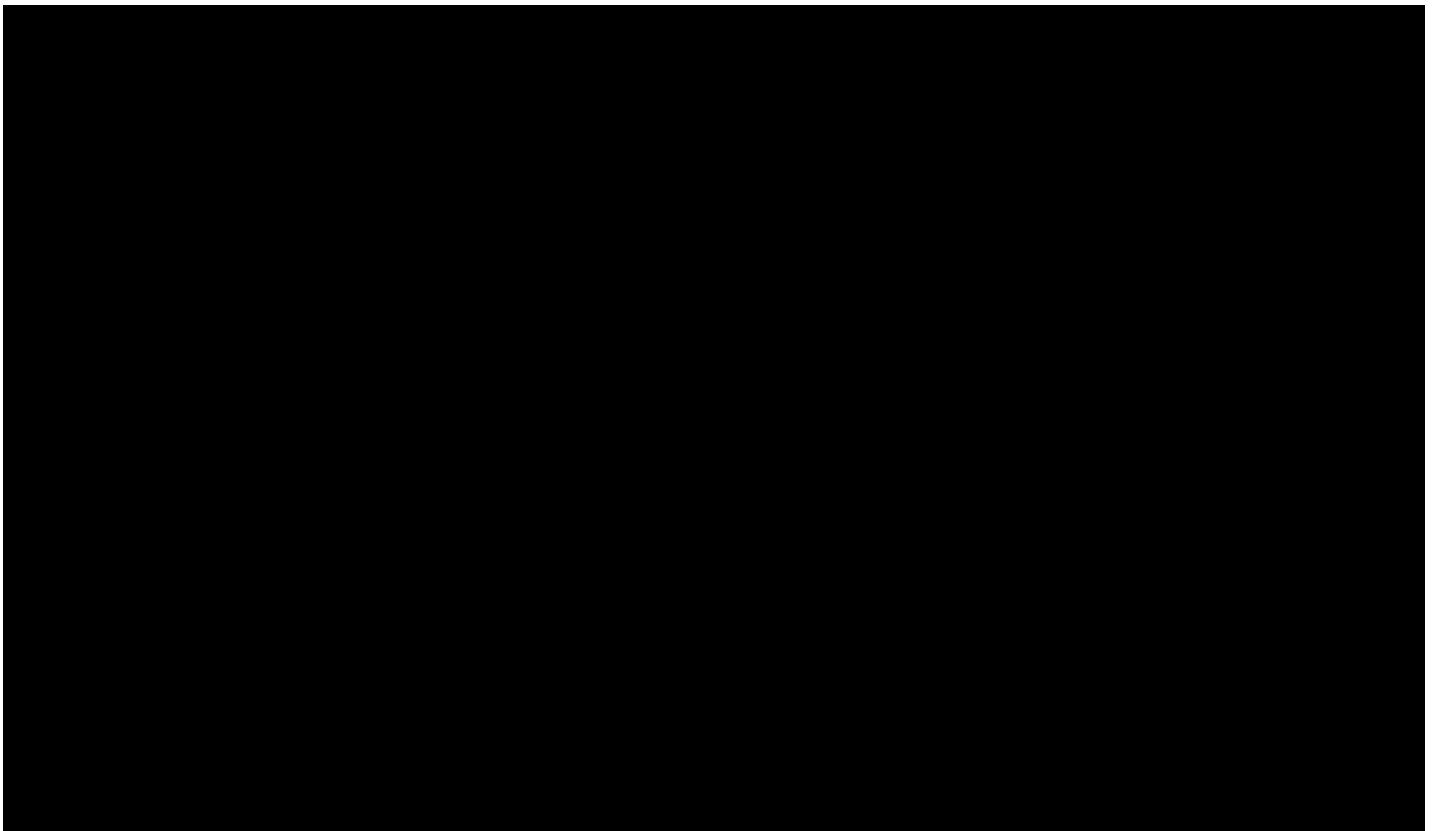


Exhibit 8
BUSINESS ASSOCIATE EXHIBIT

BACKGROUND

- A. You (“Covered Entity”) and Epic Hosting, LLC (“Business Associate”) have entered into a Hosting Services Agreement (inclusive of this Exhibit, the “Agreement”), pursuant to which Covered Entity will obtain hosting services from 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 will 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 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. [REDACTED] 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 of which [REDACTED] Business Associate becomes aware [REDACTED]

- 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. Notifications Regarding Breaches of Unsecured PHI. 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 and any other agreements in effect between Covered Entity and Business Associate, including without limitation the provision of hosting 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.

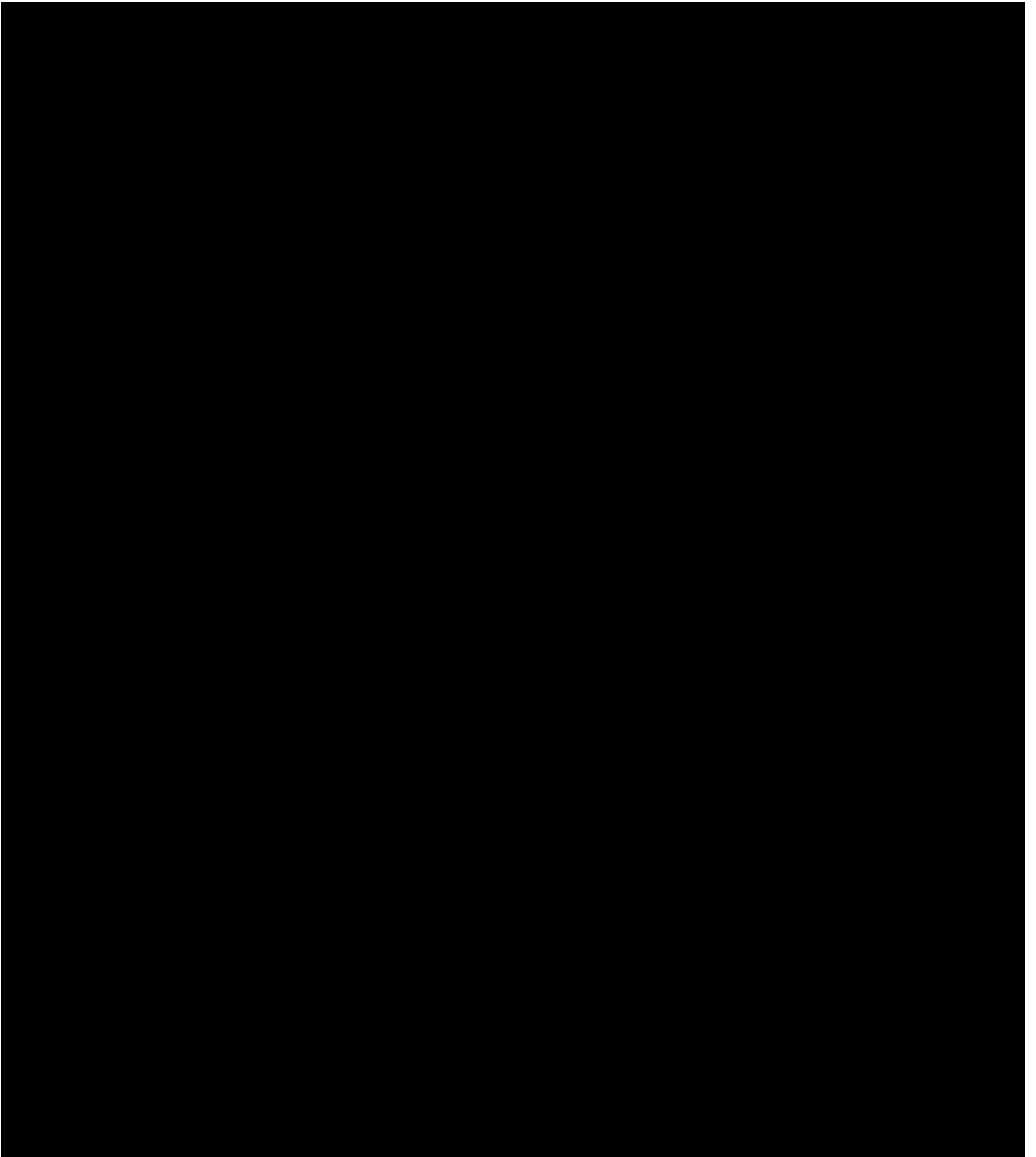
- a. Termination for Cause by Covered Entity. Upon Covered Entity's knowledge of a material breach by Business Associate of this Exhibit,
 - 1. Covered Entity may provide a reasonable opportunity for Business Associate to cure the material breach or end the material violation and if Business Associate does not cure the material breach or end the material violation within a reasonable time, Covered Entity may terminate this Exhibit and the Agreement; or
 - 2. If Business Associate 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.

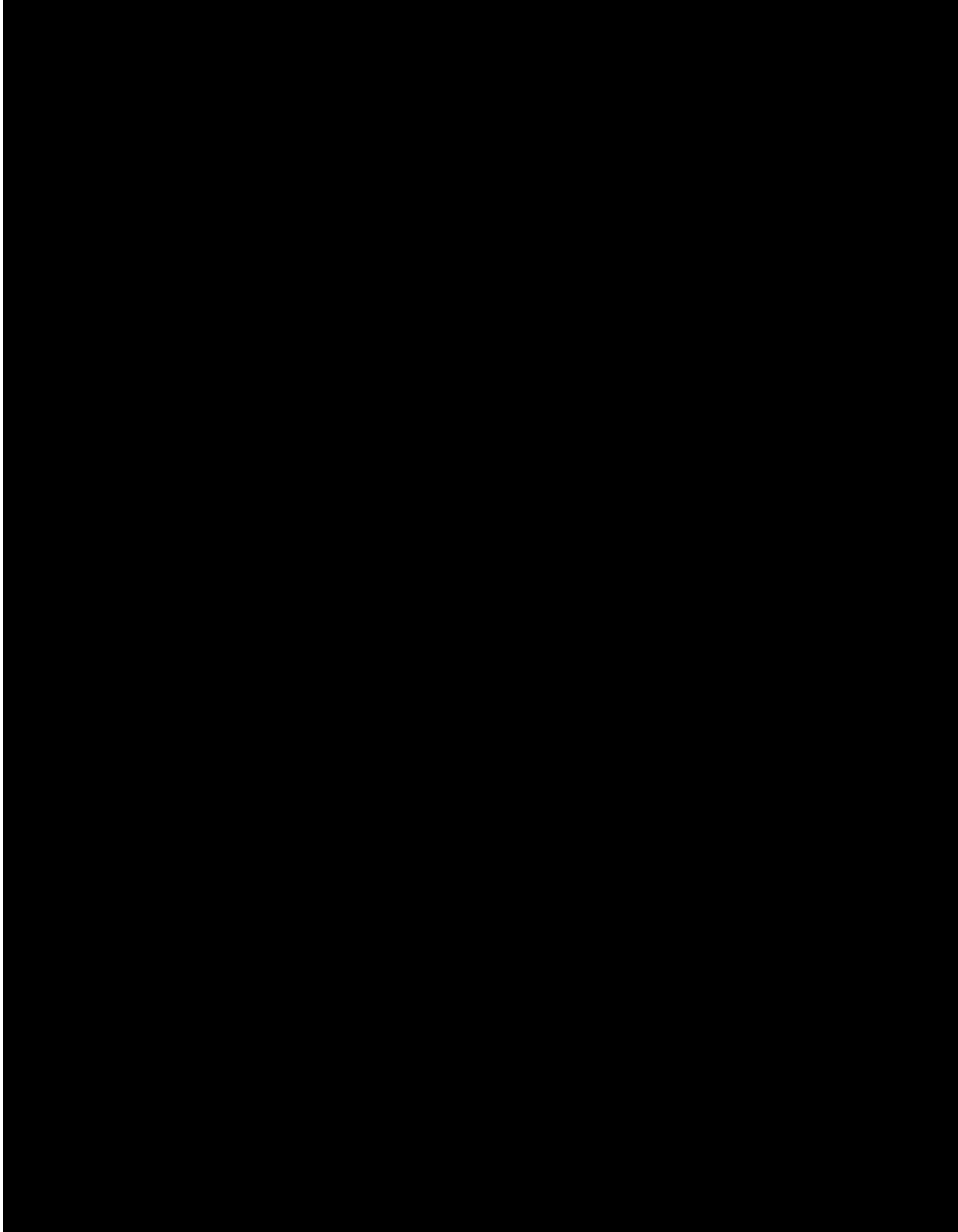
5. Miscellaneous.

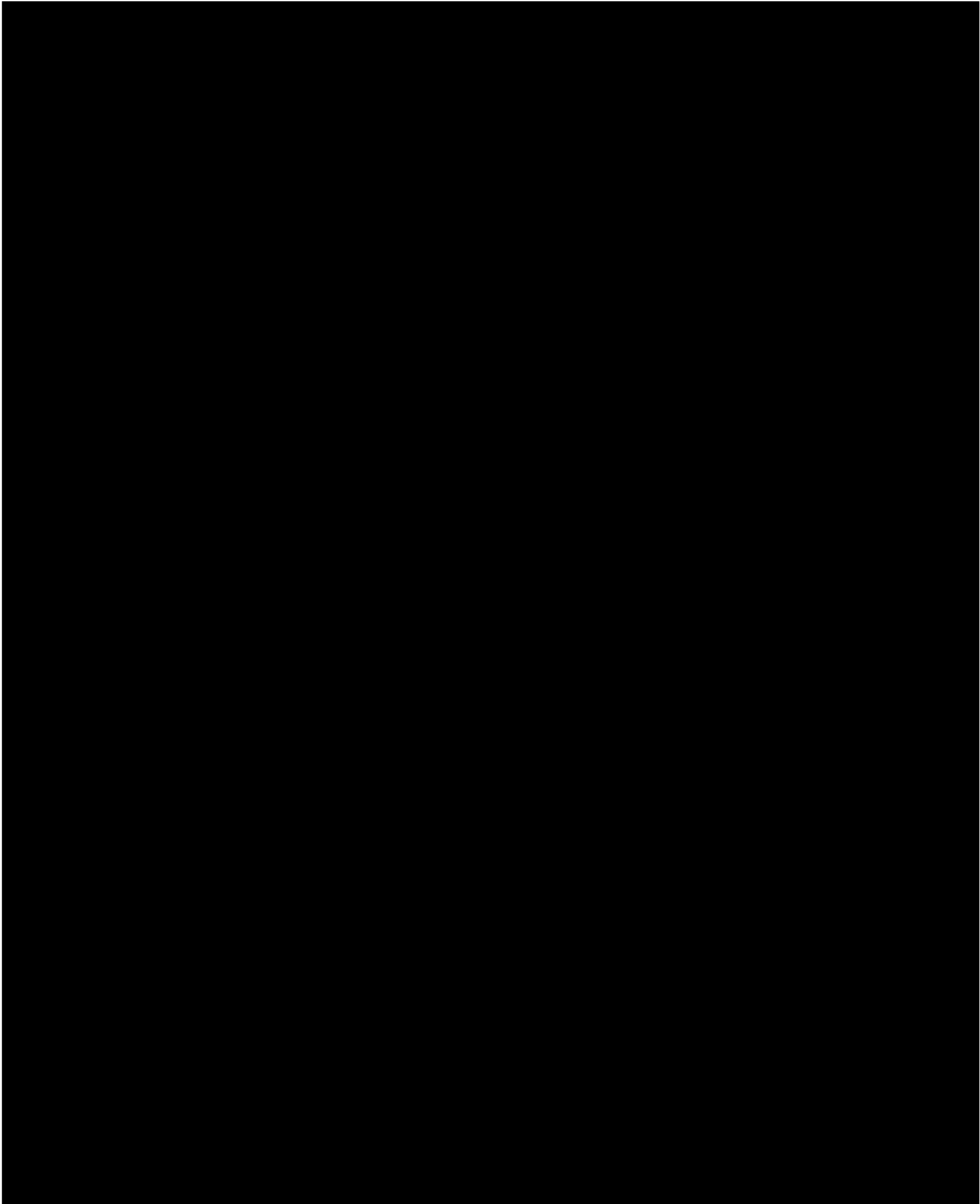
- a. Changes to Regulations. If the Regulations are amended, including by way of anticipated regulations yet to be promulgated as provided in HITECH, in a manner that would alter the obligations of Business Associate as set forth in this Exhibit 8, then the parties agree in good faith to negotiate mutually acceptable changes to the terms set forth in this Exhibit 8.
- b. Survival. The respective rights and obligations of Business Associate under Section 4(b) 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:

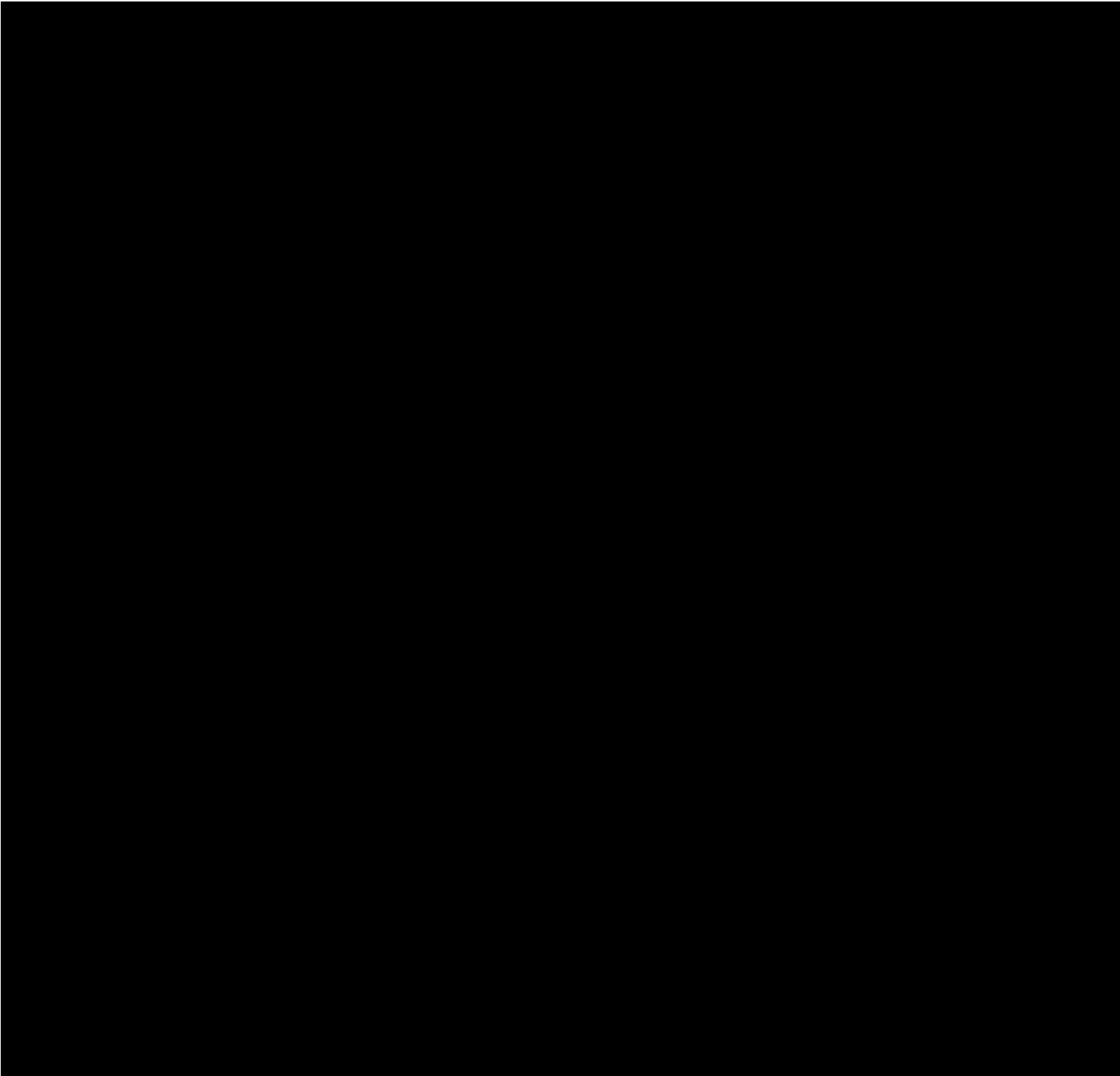
1. in the case Business Associate violates any security provision specified in § 13401(a) of HITECH, sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner such sections apply to a covered entity 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.

Epic Hosting Information Security Practices

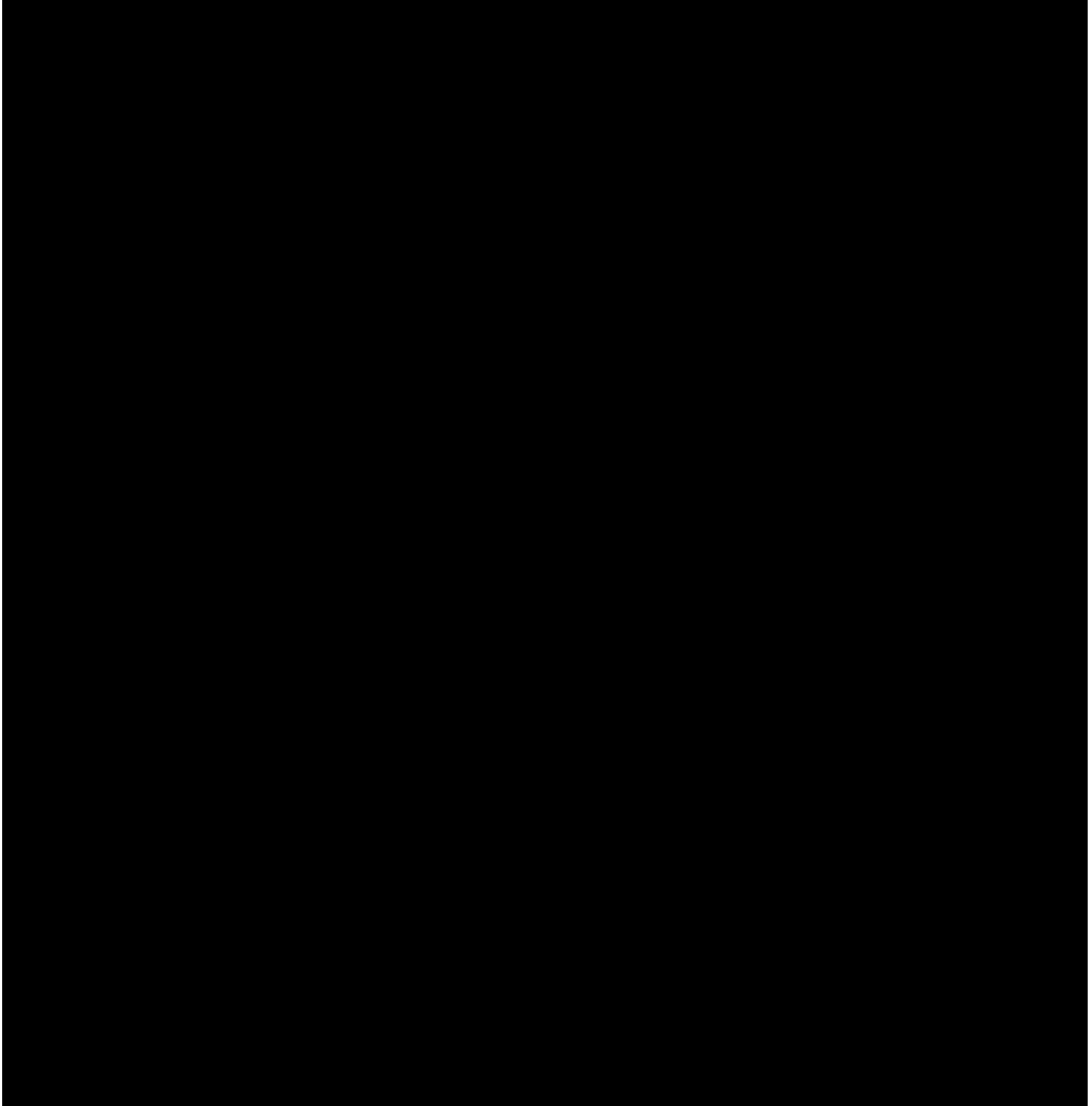


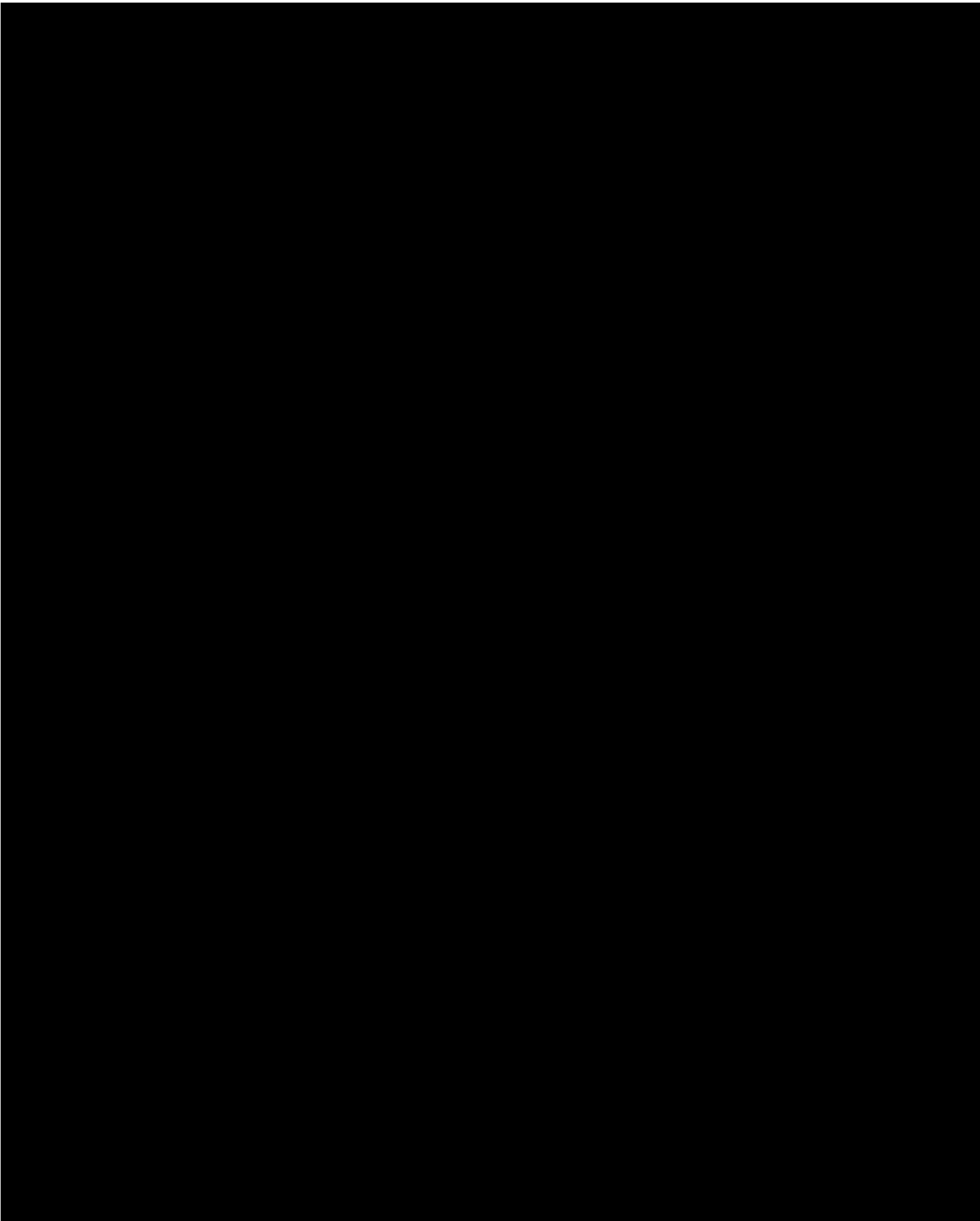


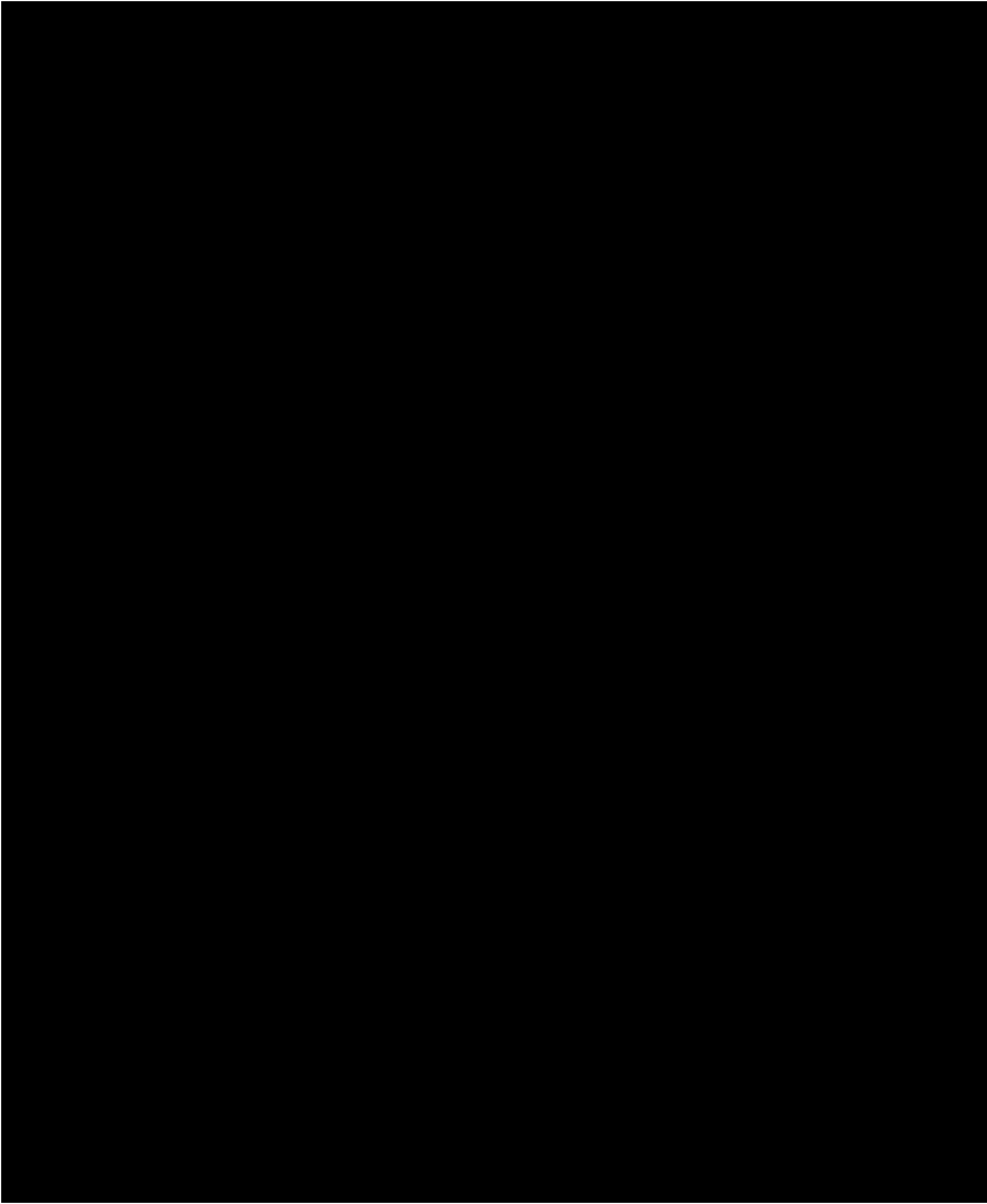


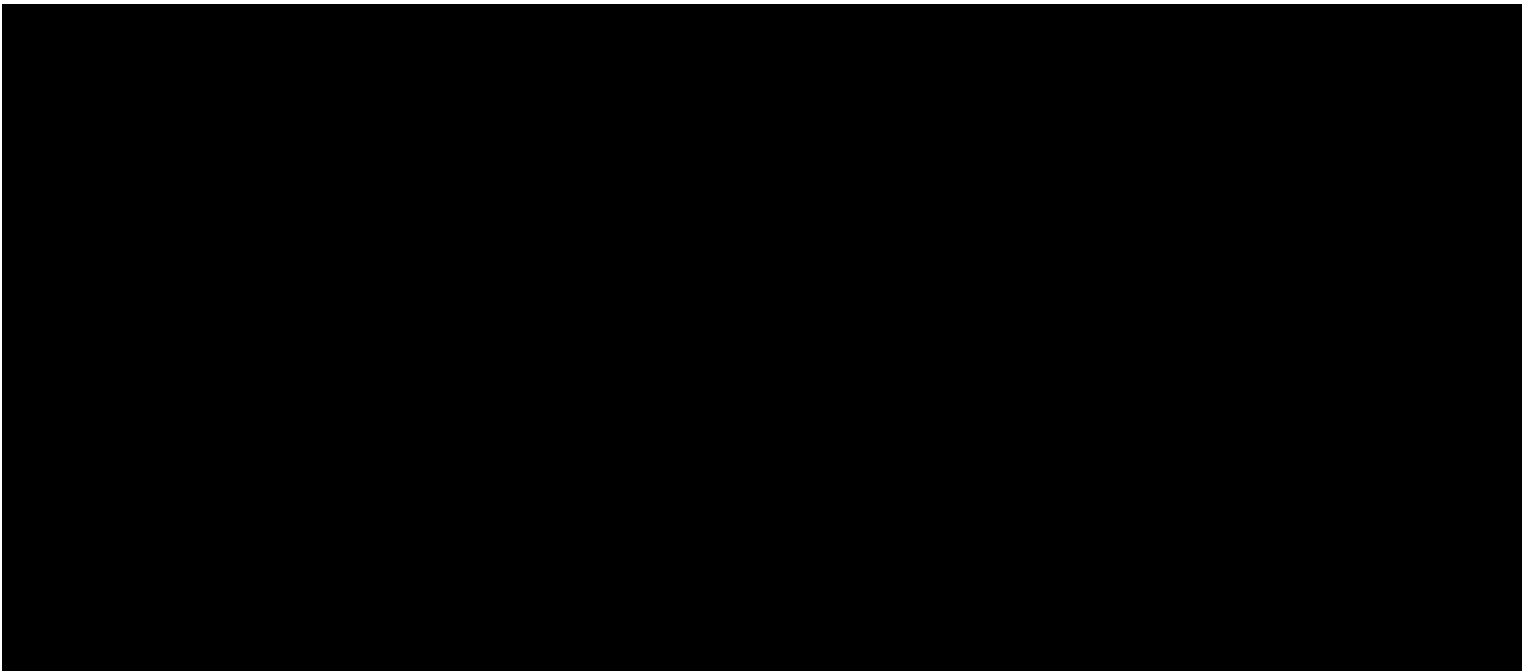


Your Organization's Responsibilities for Information Security









Epic Travel Policies

General

Before traveling to Your facilities, Epic must receive written authorization from You for the travel as provided in the Agreement. Epic will complete a travel authorization form which, unless agreed otherwise, will include the names of everyone who will be billing his or her travel expenses to You, the on-site dates for the personnel, and an estimate for all expenses.

Certain Reimbursable Expenses

Transportation:

Air: Economy-class seats (i.e., Standard Economy, Main Cabin, or similar) generally are to be booked. Optional upgrades will not be reimbursed. Flights are chosen based on price and schedule. Epic will choose the most cost effective flight that otherwise satisfies its booking criteria (e.g. avoidance of double connections, fits any reasonable time constraints). If a charter would be of equal cost to or less expensive than commercial airfare due to the number of traveling staff, Epic may use a charter.

Ground: You will reimburse Epic for tolls, parking fees, a standard amount for mileage to and from the outbound airport, airport shuttle service, public transportation, taxis, and ride-sharing services (e.g., Uber and Lyft). Personal car mileage is based on the IRS set rate. Epic will normally rent cars from a national car rental chain to take advantage of its national discounted rates whenever feasible.

Accommodations: You will reimburse Epic for the single occupancy cost of a standard room at an Epic standard hotel.

Epic standard hotels are hotels that serve business travelers with suitable internet connections, business centers, safety (internally and in the surrounding locale), cleanliness, on-site or nearby food service, and on-site or nearby gathering areas to accommodate groups for work-related meetings, as well as short commuting distances and sufficient vacancies to accommodate the Epic staff on that trip.

Exhibit 11



Non-Reimbursable Expenses

You will not reimburse Epic for the following expenses:

- Hotel movies
- Entertainment
- Sightseeing
- Alcoholic beverages
- Child or pet care
- Damages to an employee's personal vehicle
- Lost or stolen funds or personal property
- Parking tickets, speeding tickets, etc.
- Travel insurance
- Insurance in connection with personal automobiles
- Hotel health club memberships
- Laundry service (unless Epic staff is on site for six consecutive days or more)
- Personal services and personal supplies
- Meals in Madison or the Madison area (other than at the Madison airport)
- Any expense which is not bona fide for federal income tax purposes

Documentation of Travel Expenses

Epic travelers generally are required to provide Epic with receipts for their travel expenses. Lodging receipts should include the name and location of the lodging, dates of stay and separate amounts for charges such as meals. On the occasion a receipt is lost or misplaced, Epic's accounting department will obtain documentation from the traveler for the applicable expenses.

