

## CONNECT REFERRAL SYSTEM BUSINESS ASSOCIATE AGREEMENT

CONNECT PARTICIPANT, as a HIPAA “Covered Entity” (“PARTICIPANT”) wishes to disclose certain information, some of which information may constitute Protected Health Information (“PHI”) under HIPAA, to the State of Montana DPHHS (“BUSINESS ASSOCIATE”), as a “Business Associate” of PARTICIPANT through the State’s administration of the CONNECT referral.

PARTICIPANT and BUSINESS ASSOCIATE intend to protect the privacy and provide for the security of PHI disclosed to BUSINESS ASSOCIATE pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information and Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

Part of the HIPAA Regulations, the Privacy Rule and Security Rule (defined below) requires PARTICIPANT to enter into an Agreement containing specific requirements with BUSINESS ASSOCIATE prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations (“C.F.R”) and contained in this Agreement.

In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: **Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.**

1.1. **Specific definitions:**

(a) **Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Agreement, Business Associate (as the business associate to covered entities acting as participants in the CONNECT referral system) is the State and sub-Business Associate shall mean Noble.

(b) **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean all covered entities engaged as participants in the CONNECT referral system as to whom the State acts as a Business Associate under the CONNECT Participation Agreement.

(c) **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. **Obligations of Business Associate.**

- 2.1. **Permitted Uses.** BUSINESS ASSOCIATE shall not use Protected Information except for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement as permitted under the Agreement. Further, BUSINESS ASSOCIATE shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by PARTICIPANT. However, BUSINESS ASSOCIATE may use Protected Information (i) for the proper management and administration of Business Associate, or (ii) to carry out the legal responsibilities of Business Associate [45 C.F.R. Sections 164.504(e) (2)(i), 164.501(e)(2)(ii)(A) and 164.504(e)(4)(i)].
  - 2.2. **Permitted Disclosures.** BUSINESS ASSOCIATE shall not disclose Protected Information except for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted under the Agreement. BUSINESS ASSOCIATE shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by PARTICIPANT. If BUSINESS ASSOCIATE discloses Protected Information to a third party, BUSINESS ASSOCIATE must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BUSINESS ASSOCIATE of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
  - 2.3. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which PHI solely relates [42 U.S.C. Section 17935(a)]. BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of PARTICIPANT and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however this prohibition shall not affect payment by PARTICIPANT to BUSINESS ASSOCIATE for services provided pursuant to the Agreement.
  - 2.4. **Appropriate Safeguards.** BUSINESS ASSOCIATE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F. R. Sections 164.308, 164.310, and 164.312 [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
3. **Reporting of Improper Access, Use, or Disclosure.** BUSINESS ASSOCIATE shall report to PARTICIPANT *in writing* of any access, use or disclosure of Protected Information not permitted by the Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) business days after discovery [42 U.S.C Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
  4. **Business Associate's Agents.** BUSINESS ASSOCIATE shall ensure that any agents,

including subcontractors, to whom it provides Protected Information, agree *in writing* to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such PHI and implement the safeguards required herein with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation [45 C.F.R. Sections 164.530(f) and 164.530(e)(1)].

5. **Access to Protected Information.** This provision applies only if the BUSINESS ASSOCIATE maintains a designated record set on behalf of the PARTICIPANT. BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to PARTICIPANT for inspection and copying within ten (10) days of a request by PARTICIPANT to enable PARTICIPANT to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BUSINESS ASSOCIATE maintains an Electronic Health Record, BUSINESS ASSOCIATE shall provide such information in electronic format to enable PARTICIPANT to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
6. **Amendment of PHI.** This provision applies only if the BUSINESS ASSOCIATE maintains a designated record set on behalf of the PARTICIPANT. Within ten (10) days of receipt of a request from PARTICIPANT for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BUSINESS ASSOCIATE or its agents or subcontractors shall make such Protected Information available to PARTICIPANT for amendment and incorporate any such amendment to enable PARTICIPANT to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526.
7. **Accounting Rights.** Within ten (10) days of notice by PARTICIPANT of a request for an accounting of disclosures of Protected Information, BUSINESS ASSOCIATE and its agents or subcontractors shall make available to PARTICIPANT the information required to provide an accounting of disclosures to enable PARTICIPANT to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including, but not limited to 42 U.S.C. Section 17935(c), as determined by PARTICIPANT. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BUSINESS ASSOCIATE maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE shall within five (5) days of a request forward it to PARTICIPANT in writing. It shall be PARTICIPANT's responsibility to prepare and deliver any such accounting requested. BUSINESS ASSOCIATE shall not disclose any Protected Information except as set forth in Sections 2.b. of this Business Associate Agreement [45

C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph i shall survive the termination of this Agreement.

8. **Government Access to Records.** BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to PARTICIPANT and to the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) for purposes of determining BUSINESS ASSOCIATE’s compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. BUSINESS ASSOCIATE shall provide to PARTICIPANT a copy of any Protected Information that BUSINESS ASSOCIATE provides to the Secretary concurrently with providing such Protected Information to the Secretary.
9. **Minimum Necessary.** BUSINESS ASSOCIATE (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Part 164, 45 C.F.R. Section 164.514(d)(3)]. BUSINESS ASSOCIATE understands and agrees that the definition of “minimum necessary” is in flux and shall keep itself informed of guidance issued by the Secretary of the United States Department of Health and Human Services with respect to what constitutes “minimum necessary”.
10. **Data Ownership.** BUSINESS ASSOCIATE acknowledges that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.
11. **Notification of Breach.** During the term of the Agreement, BUSINESS ASSOCIATE shall notify PARTICIPANT without unreasonable delay and in no case later than five (5) business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which BUSINESS ASSOCIATE becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Such notice shall include, but not be limited to, the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, or disclosed during such breach. BUSINESS ASSOCIATE shall provide PARTICIPANT with any other available information that the PARTICIPANT is required to include in notification to the individual under 45 C.F.R. Section 164.404(c) at the time of the notification required by this subparagraph m or promptly thereafter as information becomes available. [45 C.F.R. 164.410]. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
12. **Breach Pattern or Practice by Participant.** Pursuant to 42 U.S.C. Section 17934(b), if the BUSINESS ASSOCIATE knows of a pattern of activity or practice of the PARTICIPANT that constitutes a material breach or violation of the PARTICIPANT’s obligations under the Agreement, the BUSINESS ASSOCIATE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BUSINESS ASSOCIATE must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of the United States Department of Health and Human Services. BUSINESS ASSOCIATE shall provide written notice to PARTICIPANT of any pattern of activity or practice of the PARTICIPANT that BUSINESS ASSOCIATE believes constitutes a material breach or violation of the PARTICIPANT’s obligations under the Agreement within five (5) days of discovery and shall meet with PARTICIPANT to discuss and attempt

to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 13. Termination

13.1. **Material Breach.** A breach by BUSINESS ASSOCIATE of any provision of this Business Associate Agreement, as determined by PARTICIPANT, shall constitute a material breach of the Agreement and shall provide grounds for *immediate* termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

13.2. **Effect of Termination.** Upon termination of the Agreement for any reason, BUSINESS ASSOCIATE shall destroy all Protected Health Information that BUSINESS ASSOCIATE or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If destruction of the PHI is not feasible, because it is still being utilized for referral purposes by other participants or destruction is otherwise contrary to terms of the Participation Agreement, BUSINESS ASSOCIATE shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that comply with applicable law and as contemplated under the Participation Agreement.

13.3. **Amendment to Comply with Law.** PARTICIPANT and BUSINESS ASSOCIATE acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Business Associate Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that PARTICIPANT must receive satisfactory written assurance from BUSINESS ASSOCIATE that BUSINESS ASSOCIATE will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the Business Associate Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. PARTICIPANT may terminate the Agreement upon thirty (30) days written notice in the event (i) BUSINESS ASSOCIATE does not promptly enter into negotiations to amend this Business Associate Agreement when requested by PARTICIPANT pursuant to this Section or (ii) BUSINESS ASSOCIATE does not enter into an amendment to this Business Associate Agreement providing assurances regarding the safeguarding of PHI that PARTICIPANT, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

13.4. **Survival.** The respective rights and obligations of Business Associate shall survive the termination of the Agreement.

14. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

[Signature by the PHSD Administrator]

[Signature by the Participant]