

**PARTICIPATION AGREEMENT
CONNECT BI-DIRECTIONAL REFERRAL SYSTEM**

PARTICIPANT

Participant Name

Authorized Agent/Designated Contact and Title

Address

City, State, Zip

Email

Phone

THE STATE

State of Montana Department of Public
Health and Human Services

Address

City, State, Zip

Email

Phone

This Participation Agreement for the State of Montana CONNECT bi-directional referral system (“Participation Agreement” or “Agreement”) is entered into as of the date electronically signed by the Participant (“Effective Date”) by its authorized agent/Designated Contact in the CONNECT system, by and between the State of Montana Department of Public Health and Human Services (the “State”), and the undersigned Participant (“Participant”) (the State and Participant being, collectively, “the Parties”).

WHEREAS, the State has developed and made available to Participant and other participants located in throughout the state of Montana, the ability to participate in the CONNECT bi-directional referral system for the purposes of participants locating referral sources for their Patients/Clients, referring such Patients/Clients to other participants, receiving referrals of Patients/Clients from other recipients and tracking referral information and statuses of referred Patients/Clients;

WHEREAS, Participant wants to participate in the CONNECT system for one or more purposes stated, above;

WHEREAS, the CONNECT system has discontinued using the Memorandum of Understanding (MOU) and Release of Information (ROI) processes that was previously used by CONNECT to set forth a collective understanding regarding by and amongst the State and participants regarding the manner in which participants were able to disclose and exchange information through the CONNECT system, and this Agreement supersedes and invalidates all terms of that MOU and all ROIs with regard to the State, Participant, other participants and Authorized Users; and

WHEREAS, pursuant to the eligibility criteria for the CONNECT system, Participant must enter into this Participation Agreement with State in order to use and/or continue using the CONNECT system.

NOW THEREFORE, in consideration of the premises and the exchange of promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below.
 - 1.1. “**Administrator**” means an Authorized User of the State that obtains training to and assists other Authorized Users to set up accounts and with regard to on-going technical assistance and support to non-administrative Authorized Users. Administrators using the CONNECT Administrative User Guide, integrated herein by reference, and other Administrative updates issued by the State to Administrators, to provide Administrative Services. Administrators may also serve in the role of the Participant’s Designated Contact.
 - 1.2. “**Authorized User**” means an agent of Participant designated by the Participant, to use CONNECT on behalf of the Participant, including without limitation, an employee of the Participant, and shall also mean any person authorized to access CONNECT, such as an employee of the State authorized to access CONNECT to troubleshoot and administer the system.
 - 1.3. “**Breach of Privacy or Security**” is a use or disclosure of Patient/Client information other than in compliance with the terms of this Agreement that either, (a) pursuant to applicable laws or regulations, must be reported to affected individuals and/or government officials, including without limitation federal or state data breach notification rules, or (b) adversely affects: (i) the viability of CONNECT; (ii) the trust among participants; or (iii) the legal liability of the State or any participant.
 - 1.4. “**Client**” means a person receiving services from a participant, who may or may not be a patient of a Health Care Provider, whose data is shared through CONNECT.
 - 1.5. “**CONNECT bi-directional referral (“CONNECT” or “CONNECT referral”) system**” means the CONNECT system developed by the State to provide for an electronic space that considers both Patient/Client Data going from a participant (such as a health care provider) to another participant (such as a referred community program or resource) and the information returning from the other participant to the originating participant for the purpose of facilitating more clinically meaningful, cost effective referring and coordinated care for Patients/Clients of participants. The CONNECT system is intended to support and assist in facilitating such referrals, electronically, and support bi-directional communication related to such referrals in a secure electronic space between participants.
 - 1.6. “**Data**” (also referred to as “**Patient/Client Information**”) means protected health information, or information that identifies a Patient/Client, provided to CONNECT by Data Suppliers. For the purposes of this Agreement, protected health information is defined by the Health Insurance Portability and Accountability Act (HIPAA) Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E, and the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C, both as amended from time to time.
 - 1.7. “**Data Recipient**” means an individual or entity that has entered into a Participation Agreement and whose Authorized Users will receive Data using the CONNECT system.
 - 1.8. “**Data Supplier**” means a HIPAA covered entity, usually a Health Care Provider, that has entered into this Participation Agreement.
 - 1.9. “**Designated Contact**” means an Authorized User employed or contracted by a participant and designated by the Participant to be the recipient of notices from the State under this Agreement and the main contact of the Participant to make and engage in communications between the Participant and the State in regards to utilization of CONNECT. In order to participate in the CONNECT referral system, Participant must designate and identify, at least one person as Participant’s Designated Contact under this

- Agreement who is the authorized recipient to receive notification and engage in communications with the State and/or its agents or subcontractors, such as the Administrator assigned to Participant's regional area, as directed and determined by the State, with regard to the Participant's utilization and participation in CONNECT.
- 1.10. **"Gatekeeper"** means the CONNECT Authorized User of Participant that receives notification of all referrals for participants. The Gatekeeper assigns incoming client referrals to the Authorized User within the Participant's workforce who is the provider expected to serve the Patient/Client referred. Gatekeepers receive notifications via when a referral is sent through the system to Participant from another participant.
 - 1.11. **"Health Care Provider"** means a physician, group practice, hospital or health system, or other health care organization or professional that provides treatment to Patients and has entered into a Participation Agreement. A Health Care Provider also may be a participant, a Data Supplier, a Data Recipient, and an Authorized User.
 - 1.12. **"Participant"** is the party to this Agreement. This Agreement does not permit access to CONNECT by persons who are not participants or Authorized Users of participants or the State.
 - 1.13. A **"participant"** or **"participants,"** herein, refers to all connect participants, including Participant.
 - 1.14. **"Participation Agreement"** means a legally binding agreement between the State and a party pursuant to which that party acts as a participant in accordance with, and agrees to comply with, this Agreement.
 - 1.15. **"Patient/Client Data"** means information provided, or made available through CONNECT.
 - 1.16. **"Patient"** means an individual who has received or will receive treatment or health care services from a Health Care Provider.
 - 1.17. **"Permitted Use"** is the reason or reasons for which participants and Authorized Users may access Data through CONNECT. For the purpose of this Agreement, Permitted Use is defined as: use of Participant, and other participants, locating referral sources for Participant's Patients/Clients, referring such Patients/Clients to other participants and tracking referral information and statuses of referred Patients/Clients to ensure referral process effectuated its purpose. The State is permitted to use CONNECT and Participant information in CONNECT to administer the CONNECT system and assist Participant and other participants in a manner compliant with this Agreement and applicable law, including Privacy Laws, and for the purpose of obtaining and using Participant information, excluding Patient/Client Data protected from such uses by Privacy Laws, to further public health efforts in the State of Montana, including, but not limited to, integrating Participant information into other public health related referral systems and making that information publicly available. The right of the state to use and disclose Participant information by the State for public health efforts will survive the termination of this Agreement.
 - 1.18. **"Privacy Laws"** means all federal and state laws and regulations designed to protect the privacy and security of individuals and governing the use and disclosure of individually identifiable information of Patients/Clients of participants used or disclosed by and through the CONNECT system by the State, participants and Authorized Users. Such laws include, but are not limited to, the health insurance portability and accountability act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act), and the regulations promulgated thereunder (such as the HIPAA Privacy Rule, Security Rule, and Breach Notification Rule) by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws, such as the Montana Statutes falling within the Montana Code

Annotated, Title 50 (Health and Safety), Chapter 16 (Health Care Information), as applicable; the Family Educational Rights and Privacy Act (FERPA) and Montana Statutes falling within Title 20 (Education), specifically, Chapter 5 (Pupils), Chapter 1 (General Provisions), Part 2 (Miscellaneous Provisions) and Chapter 5 (Pupils), Part 4. (Health), along with any other state or federal laws governing the use and disclosure of education and other such confidential records, such as those statutes and rules implemented under the Montana Code Annotated Title 52 (Family Service), and Title 41 (Minors); the Individuals with Disabilities Act (IDEA) and its implementing regulations; 42 CFR Part 2 (governing information related to alcohol or drug abuse diagnosis, treatment or referral for treatment by Part 2 providers), and its implementing regulations; and, all other laws governing the use and disclosure of individually identifiable information of Patients/Clients of the State, participants and Authorized Users used and disclosed pursuant to this Agreement through the CONNECT system.

- 1.19. **“Provider”** means the Authorized User in the Participant’s employ that offers the actual service to the client. Providers are the individuals who both make the referrals through the system and who update referral statuses of Patients/Clients in the CONNECT system. These individuals may be medical doctors, nurses, social workers, therapists, nutritionists, or other individuals employed by the Participant to provide services. Participants may also assign provider roles to individuals who assist the services providers. Providers may also be CONNECT Gatekeepers for purposes of referral assignment.
2. **Participation Term.** Participant agrees that the initial term of participation in the CONNECT referral system shall commence on the Effective Date and expire when/if a party terminates its participation in CONNECT or this Agreement is otherwise terminated pursuant to its terms, including, but not limited to, if the State requires Participant to renew its participation status in CONNECT by executing a new or updated Participation Agreement, or other agreement superseding this Agreement, and Participant does not do so as requested by the State (“Term”).
3. **Participant Responsibility.**
 - 3.1. **Participant Responsible for Participant Conduct and Conduct of Authorized Users.** Participant shall be solely responsible for all acts and omissions of Participant and/or Participant’s Authorized Users, and all other individuals who access Patient/Client Information through CONNECT and/or make such information available to the State and other participants through CONNECT as agents of Participant, and all such acts and omissions shall be deemed to be the acts and omissions of Participant. Participant shall require that all of its agents using the CONNECT system are Authorized Users and that they use the CONNECT referral system only in accordance with the terms of this Agreement and the Terms of Use. Participant shall discipline appropriately any of its Authorized Users who fail to act in accordance with this Agreement in accordance with the Participant’s disciplinary policies and procedures.
4. **General Obligations of the Parties.**
 - 4.1. **Technology and Systems.** Participant shall have the sole responsibility for acquiring, installing and maintaining its own technology environment and equipment necessary to properly access, operate and utilize CONNECT, including, without limitation: servers, Internet access, LANs and WANs; for any communications or other costs incurred in operating, accessing and using CONNECT, and for any other expenses relating to the foregoing. Any necessary equipment and connections shall conform to the State’s then-current specifications for CONNECT. Participants shall be responsible for ensuring that all computers connecting to CONNECT are properly configured, including but not

limited to the operating system, web browser, and internet connectivity. Participant shall be responsible for selecting and training adequate personnel with the requisite experience necessary to operate their systems, who are also familiar with the records accessed/transmitted through CONNECT. Participant shall establish adequate operational back-up systems and procedures to ensure recovery and continuity of its systems and operations in the event of a failure.

- 4.2. **Regulatory Compliance.** Authorized Users and Participant assume sole and complete responsibility for ensuring that its or their use of CONNECT, as applicable, are in compliance with all applicable federal, state and local laws and regulations, including, without limitation all Privacy Laws applicable to the information disclosed, in any way, through the CONNECT system.

5. **Suspension of Access; Termination.**

- 5.1. **Suspension of Access to the CONNECT Referral System.** The State may suspend Participant's and/or its Authorized Users' access to the CONNECT referral system, pending possible termination of the Participant's and/or its Authorized Users' participation in the CONNECT referral system, for any of the following reasons:

- A. The Participant has failed to reasonably utilize the CONNECT referral system for referrals;
- B. The Participant or its Authorized Users have failed, repeatedly, to respond to referrals sent to Participant from other Participants or actively or appropriately engage in coordinated care efforts requested by other Participants;
- C. The Participant or any of its Authorized Users have been determined noncompliant with or sanctioned by the Federal or State government under any Privacy Law;
- D. The Participant has discontinued its operations;
- E. The State has determined that Participant and/or its Authorized users have or likely have violated any portion of this Agreement;
- F. The Participant or its Authorized Users are subject to criminal charges related to Participant's services;
- G. Any other reason deemed appropriate by the State to suspend the Participant's participation under this Agreement in order to protect other participants, Authorized Users and/or Patients/Clients from the actions of the Participant and/or its Authorized Users.

In the event that Participant and/or its Authorized Users are suspended from accessing the CONNECT referral system the Participant or Authorized User may request to the DPHHS Administrator that the State reinstate suspended access to the system, and whether a Participant's and/or an Authorized User's access is reinstated is, and will remain at all times under this Agreement, at the sole discretion of the State. Participants and Authorized Users suspended from the system may only be reinstated by the DPHHS Administrator of the CONNECT referral system. Following suspension of Participant or Authorized User Access, the State may terminate Participant's participation in the CONNECT referral system pursuant to the terms of this Agreement, if the state deems it appropriate to do so, in its sole discretion.

- 5.2. **Termination.** Each Participant's Authorized User's and/or license to use and access CONNECT, as applicable, will terminate immediately upon the State's revocation of the Authorized User's username and password or termination or expiration of the relevant Participation Agreement. In addition, the Participant's and/or Authorized User's license to use and access CONNECT, as applicable, may be terminated by the State, immediately

and without prior notice to the Participant and/or Authorized user(s), as applicable, in the event (a) the Participant or an Authorized User of the Participant materially breaches these Terms of this Agreement; (b) the State gives an Authorized User or Participant notice of additional terms and conditions that will govern use of or access to CONNECT, and the Authorized User or Participant does not accept the additional terms and conditions; (c) the State ceases providing access to CONNECT, in general; and/or (d) in the case of the Participant, specifically, the Participant has discontinued its operations or otherwise discontinued providing services.

- 5.3. **Termination Without Cause.** The State may terminate this Agreement without cause, at any time, upon notice to the Participant. When possible, the State may give thirty (30) days or more prior notice to the Participant for the purpose of permitting the participant transitioning referrals from the system, prior to the effective date of termination. The State may terminate this agreement immediately if federal and/or state funding to maintain CONNECT becomes unavailable to sustain system operations.
- 5.4. **Consequences Upon Termination.** Upon the termination or expiration of an Authorized User's or a Participant's license to use and access CONNECT, as applicable: (a) the Authorized User's or Participant's use of CONNECT shall immediately and automatically terminate, (b) the Authorized User or the Participant shall cease use of any of the State Intellectual Property related to CONNECT; (c) the Authorized User or the Participant shall immediately return to the State any State Intellectual Property, the State Confidential Information, documentation and any other the State property in Authorized User's or Participant's possession; and (d) the Authorized User or the Participant shall certify its compliance with this Section to the State in writing upon request.

Following termination of this Agreement with Participant, the State may retain data from the Participant in the CONNECT system for any period needed by other Participants to continue to provide services to Patients/Clients and as required by State policies and procedures, applicable grant or other funding or applicable law and regulations, and pursuant to other Permitted Uses Under this Agreement.

Participant further acknowledges and agrees that any Patient/Client Information made available to CONNECT prior to termination of the Agreement will remain in CONNECT, and be addressed pursuant to the terms of this Section 5.4. and State policies and procedures and will not be returned to Participant. Following termination of this Agreement, the State may, at its election, delete the data or Patient/Client Information in accordance with the State's data retention and destruction policy as then in effect and as modified from time to time.

6. **Complete Agreement; No Waiver.**

- 6.1. This Agreement includes, and incorporates by reference:
- 6.1.1. Terms and Conditions of Participation and Use for the CONNECT referral system;
 - 6.1.2. CONNECT System Business Associate Agreement;
 - 6.1.3. Any additional agreements signed by the State and Participant in relation to the Participant's participation in the CONNECT system;
 - 6.1.4. CONNECT Policies and Standards, as applicable.
- 6.2. This Agreement sets forth the entire understanding of the State and the Participant and supersedes all prior agreements and understandings with respect to its subject matter, unless otherwise stated in this Agreement. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

7. Other Provisions and Legal Terms

- 7.1. **Notices.** All notices made pursuant to this Agreement to the Participant and its Authorized Users shall be in writing and sent to the Authorized User and the Designated Contact of the Participant through the notifications function of the CONNECT system. Notices to the State shall be made to the DPHHS CONNECT Administrator.
- 7.2. **Governing Law.** This Agreement shall be construed and controlled by the laws of the State of Montana, without reference to conflict of laws principles.
- 7.3. **Jurisdiction, Venue, and Attorney Fees.** The Parties agree that all disputes between Participant and the State that arise in any way out of or in connection with this Agreement shall be heard exclusively in the State District Court of Montana located in Lewis and Clark County, Helena, Montana. If there is litigation concerning this Agreement, each party must pay its own costs and attorney fees.
- 7.4. **Amendment.** This Agreement may be amended by the State by providing notice to Participant at least thirty (30) days before any such amendment takes effect, and the terms of the amended Agreement will be effective with respect to Participant, unless Participant provides its notice of termination within thirty (30) days of the notice of amendment.
- 7.5. **No Third-Party Beneficiaries.** This Agreement is entered into for the benefit of the Parties and not for the benefit of any third party.
- 7.6. **Compliance with Laws.** Notwithstanding anything contained in this Agreement to the contrary, the obligations of the Parties will be subject to all applicable laws, regulations and orders, present and future, of any governmental authority having jurisdiction over the Parties. It is the intention of the Parties that this Agreement will comply with all applicable laws and regulations.
- 7.7. **General Construction.** As used in this Agreement, the plural form and singular form each shall be deemed to include the other in all cases where such form would apply. "Includes" and "including" are not limiting, and "or" is not exclusive.
- 7.8. **Independent Contractors.** The relationship of the State and the Participant established by this Agreement is that of independent contractors. This Agreement does not give the State or the Participant the power to direct and control the day-to-day activities of another; constitute the State, the Participant, any other participant in the CONNECT referral system as partners, joint ventures, co-owners, principal agent(s), or otherwise as participants in a joint or common undertaking; or allow the State or the Participant to create or assume any obligation on behalf of another for any purpose whatsoever.
- 7.9. **Non-Assignability.** No rights of the Participant under this Agreement may be assigned or transferred by the Participant, either voluntarily or by operation of law, without the prior written consent of the State, which it may withhold in its sole discretion.
- 7.10. **Warranty of Signature.** This Agreement must be signed by a representative of the Participant that is authorized to commit the Participant to all of the terms of this Agreement. By signing this Agreement, the person signing represents and warrants that he or she has been authorized by the respective Participant to enter into the obligations set forth in this Agreement and has read and understood this Agreement.
- 7.11. **Remedies.** The parties expressly agree that the State shall be entitled to injunctive and other equitable relief to prevent such a breach, in addition to any other remedy to which the State might be entitled. The parties waive the posting of any bond or surety prior to the issuance of an injunction hereunder. In the event a court refuses to honor the waiver of bond hereunder, the parties expressly agree to a bond in the amount of \$100.00. All remedies for such a breach shall be cumulative and the pursuit of one remedy shall not be deemed to exclude any other remedy with respect to the subject matter hereof.

- 7.12. **Force Majeure.** Neither party will be liable for any delay in performing its obligations (other than payment of money) if the delay is caused by any event beyond the reasonable control of the party, including, without limitation, acts of nature, war or insurrection, civil commotion, destruction of production facilities or materials by earthquake, fire, storm or flood, material or products shortages, labor disturbances, epidemic, disruption or slow speed of the Internet, break-downs of security or introduction of computer viruses (and the like) by third parties, any manufacturer or supplier delay in delivery or non-delivery, governmental action, terrorist attack or other similar event.
- 7.13. **Headings.** The captions and headings of these Terms of Use are included for ease of reference only.
- 7.14. **Action.** No action arising under these Terms of Use may be brought by an Authorized User or a participant more than one (1) year after the cause of action has accrued.
- 7.15. **Survival.** All of the terms and provisions in these Terms of Use which are by their nature intended to survive an Authorized User's or Participant's license to use CONNECT, as applicable shall survive any termination or expiration of the license.

[electronic signature by Participant Designated Contact]

Participant Name

Authorized Agent/Designated Contact

Authorized Agent/Designated Contact from fields above

Authorized Agent/Designated Contact Title

Electronic Signature

[State's signature?]