

TERMS AND CONDITIONS OF PARTICIPATION AND USE FOR THE CONNECT REFERRAL SYSTEM

This Terms and Conditions of Participation and Use for the Connect Referral (“Terms of Use”) is entered into as of the date signed by the Authorized User (“Effective Date”) indicated in the signature line, below (“Authorized User”), by and between the State of Montana (“SOM”), and the Authorized User.

The State has developed and made available to the Participant (Authorized User’s employer) through the Participation Agreement, along with making the same available to other participants through the state of Montana, the ability to participate in the CONNECT bi-directional referral (“CONNECT” or “CONNECT referral”) system for the purposes of 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;

You, as the Authorized User and as an agent of employed agent of Participant, wants to participate in the CONNECT system for one or more purposes stated, above;

The CONNECT system has discontinued using the Memorandum of Understanding (MOU) and Release of Information (ROI) processes that was previously used with various partners to set forth a collective understanding regarding the manner in which those partners were able to permissibly disclose and exchange information through the CONNECT system, and this Participation Agreement supersedes and invalidates all terms of that MOU and all ROIs with regard to Authorized Users who initially utilized the CONNECT system under that MOU; and

Pursuant to the eligibility criteria for the CONNECT system, Authorized User must enter into this Terms of Use to use and/or continue using the CONNECT system.

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 Authorized User and State 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. The undersigned is the Authorized User agreeing to this Terms of Use.
 - 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.
 - 1.10. “**Gatekeeper**” means the CONNECT Authorized User of participants 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 your authorizing Agent under the Participation Agreement. This Agreement does not permit access to CONNECT by persons who are not participants or Authorized Users of Participants or the State. Anytime you, the Authorized User, login to the CONNECT system, you are identifying yourself as the Authorized User of your sponsoring Participant. If you leave Participant’s employee, you no longer have permission to login to CONNECT, unless and until, you are added as an Authorized User of another participant.
 - 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 the 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. **Authorized User Term:** This Agreement and Authorized Users access to the CONNECT system shall continue in effect until the Participation Agreement is terminated by the Participant or until the time that the Authorized User no longer is an Authorized User of Participant, whichever occurs sooner. Participant or Authorized User can terminate this Agreement for Authorized use by closing Authorized User's account in CONNECT and ensuring that Authorized user no longer access or uses the CONNECT system.
3. **Grant of Access to Participants and Authorized Users for Limited Purpose.**
 - 3.1. **Limited Grant of Access and Use.** The State grants to the Participant through its Authorized Users a limited, non-exclusive, non-transferable, personal, revocable license to access and use the CONNECT referral system maintained by the State for the Permitted Use of CONNECT. Until the Authorized User's access to CONNECT is terminated in accordance with this Agreement, Authorized Users may only use CONNECT for the Permitted Uses expressly authorized by the State in this Agreement and any modifications, upgrades and new versions of this Agreement provided to the Participant according to the terms of this Agreement.
 - 3.2. **Grant of License for Use for Limited Purpose.** The State provides to Participants a limited, non-exclusive, non-transferable, personal revocable license to use CONNECT to make referrals to other participants and provide referral related Patient/Client Information to CONNECT and other participants, pursuant to and in compliance with all applicable laws governing the privacy and confidentiality of such information.
 - 3.3. **Ownership.** Access to CONNECT is licensed and not sold. No Authorized User or Participant shall, by virtue of this Agreement or otherwise, acquire any rights whatsoever in CONNECT, aside from the limited licenses granted herein, and each Authorized User and Participant hereby expressly disclaims any other rights therein. The State shall have and retain all right, title and interest in and to CONNECT and all the State Intellectual Property (defined below) comprising CONNECT as well as any modifications or enhancements made thereto. Each Authorized User and each Participant hereby irrevocably assigns to the State ownership of any and all suggestions, modifications, enhancements, improvements, alterations, changes or revisions to CONNECT (collectively, "**Modifications**") made or suggested by an Authorized User or a participant. Each Authorized User and each Participant will cooperate with the State, take any and all necessary actions, and provide any necessary documentation requested by the State to confirm such assignments and the State's ownership of the Modifications.
 - 3.4. **Prohibitions.** Neither Authorized Users nor Participants may copy, use, modify, display, rent, resell, sublicense or distribute CONNECT or access thereto without the State's prior written approval. No identifying marks, the State Intellectual Property or other proprietary right notices of the State or other parties may be deleted from, altered or obscured on CONNECT or materials produced by or using CONNECT. Authorized Users of Participants may not translate, decompile, disassemble, reverse compile, reverse engineer, decrypt or otherwise seek to recreate the source code of CONNECT, adapt CONNECT in any way or use it to create a derivative work, or grant any other person or entity the right or access to do so, without the prior written approval of the State. The State is not responsible for providing any updates, enhancements, modifications, revisions, additions, replacements or conversions to CONNECT, or for otherwise maintaining CONNECT, except as otherwise expressly set forth in this

Agreement. Authorized Users of Participants agree not to use any communications systems provided by CONNECT for any commercial solicitation.

- 3.5. **Reserved Rights.** All rights not specifically granted to Authorized Users or Participants hereunder are reserved by the State. Nothing herein shall prevent the State from promoting, selling, providing, licensing or sublicensing access to CONNECT to other parties in the State's sole discretion.

4. **Obligation of Participant and Authorized Users.**

- 4.1. **Participant Responsible for 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 referral information through CONNECT and/or make such information available through CONNECT to other participants, and all such acts and omissions shall be deemed to be the acts and omissions of Participant. Participant shall require that all of its Authorized Users use the CONNECT referral system only in accordance with the terms of this Agreement. 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.

- 4.2. **Permissible Use of CONNECT.** Participant and Authorized Users may only use CONNECT in accordance with this Agreement and any relevant policies and procedures developed by the State related to CONNECT and only for the Permitted Uses set forth in this Agreement. Specifically, Participant and Authorized Users may use CONNECT only to locate referral sources for Participant's Patients/Clients, in order to refer Patients/Clients to other participants, to provide/obtain referral information related to a Patient/Client referred by or referred to the Participant, and to track the status of referrals of referred Patients/Clients and only in compliance with all state and federal privacy and confidential laws and regulations applicable to the referral information and data disclosed ("**Privacy Laws**").

- 4.2.1. **No unauthorized aggregation of data.** Neither Participant or Authorized Users may aggregate data contained in the system in a manner not authorized by the State. Notwithstanding such prohibition, Participants and Authorized Users may utilize information contained in the system, including aggregating data related to their own referrals that the State has provided them access to in the CONNECT system in a manner compliant with all applicable laws and regulations, including, but not limited to Privacy Laws. The State may aggregate Participant information for the purpose of using such 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 the 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.

- 4.3. **Password Security and Management.** Participant and its Authorized Users shall be solely responsible for the security and confidentiality of the username and password utilized for his or her to access CONNECT, and Authorized User shall not disclose to any other person his or her password. Authorized User acknowledges that he or she is the only individual authorized to use his or her username and password, and Authorized User shall be solely responsible for any access to CONNECT using his or her username and password and any and all actions thereunder. Authorized User shall not attempt to learn or utilize the username or password of another Authorized User. Authorized User

is required to comply with all the State policies and procedures related to password management. Authorized User agrees to use his or her best efforts to ensure that all access to CONNECT and any other information and materials produced or disclosed in connection therewith are protected against unauthorized use, dissemination or disclosure. The State reserves the right to revoke an Authorized User's username and password at any time.

- 4.4. **Acceptable Use.** Participants and Authorized Users assume sole and complete responsibility for ensuring that no unauthorized use of CONNECT occurs through its or their credentials or system. Unauthorized use includes, without limitation: (a) use of CONNECT to access non-CONNECT resources; (b) attempts to gain access to data about individuals other than for the Permitted Uses set forth under this Agreement, as set forth in these Terms of Use and the applicable policies and procedures; (c) alteration or modification of individual data or of any CONNECT configuration values from the originally delivered values; (d) accessing CONNECT through any technology or means other than through the user account information provided to Authorized Users by the State or the method specified by the State; or (e) any use of CONNECT or the information contained therein in violation of any applicable law or regulation. Additionally, Authorized Users of Participants will each use best efforts to ensure compliance with the following requirements; (i) Authorized Users of Participants must not enter or transmit any information using CONNECT that is or in a manner that is unlawful, false, offensive, defamatory, or infringes the rights of any person; (ii) Authorized Users of Participants must not use CONNECT in a way that disrupts use of CONNECT by others; and (iii) Authorized Users of Participants must not use any information obtained through CONNECT except for the purpose for which the information was provided, and must not attempt to use CONNECT to gain unauthorized access to information.
- 4.5. **Suitability.** Each Participant shall be responsible for determining the suitability of CONNECT for its operations and for sending/receiving Patient/Client referrals and whether CONNECT will achieve the results it desires relating to the same. As with manually kept records, records transmitted using CONNECT may contain errors, whether resulting from incorrect input or recording of information, errors, or other causes. Authorized Users of Participants are solely responsible for understanding the limitations of CONNECT.
- 4.6. **Authorized Users' Representations.** Each Authorized User and each Participant represents, warrants and covenants that it: (a) is authorized to access or use CONNECT, as applicable; (b) all instructions and information entered into CONNECT will be accurate and complete; (c) will verify and remain solely responsible for all instructions and information entered into CONNECT, from an accuracy and a privacy standpoint, including verifying that all instructions and information entered into CONNECT is done in a manner compliant with applicable law; (d) will not upload, transmit, distribute or otherwise publish through CONNECT any materials that contain a virus, worm or other harmful component or that would cause CONNECT to malfunction; and (e) will not decompile, reverse engineer, disassemble or unlawfully use or reproduce any of CONNECT or other copyrighted or trademarked material, trade secrets or other proprietary information.
- 4.7. **Authorized Users Acknowledgement of Responsibilities.** Authorized Users are solely responsible for any and all decisions made, advice or treatment rendered, or other actions taken based on information shared or obtained by using CONNECT. Authorized Users acknowledge and understand that any and all referral related information obtained through CONNECT is not to be used as a substitute for obtaining complete information

regarding a Patient/Client directly from a referral source. Authorized Users are solely responsible for all decisions and actions taken or not taken involving client services or patient care, utilization management, and quality management resulting or in any way related to the use of any information obtained through CONNECT.

- 4.8. **Patient/Client Data.** All Patient/Client data shared and/or accessed through CONNECT is beyond the control of the State. The State neither originates nor creates the Patient/Client Information shared for the purpose of making referrals through CONNECT, nor is it obligated to monitor the specific content or accuracy of the Patient/Client Information shared by and among Participants and Authorized users for the Permitted Uses under this Agreement. Without limiting the generality of any other provision of this Agreement, the State shall have no responsibility for or liability related to the accuracy, content, recentness, completeness, or delivery of the Patient/Client Information by or through the use of CONNECT. All patient information accessed through CONNECT is subject to change arising from numerous factors, including without limitation, the passage of time, and other such factors.
- 4.9. **Monitoring Authorized Users' Use of CONNECT.** The State may conduct and maintain an audit trail of all accesses to CONNECT and to Patient/Client information shared and accessed through CONNECT. Such monitoring may include, but is not limited to, recording the machine name, internet protocol (IP) address number, user number, date, and content of all accesses to CONNECT and information accessed thereon that an Authorized User may make.

5. General Obligations of the Parties.

- 5.1. **Technology and Systems.** Authorized Users and participants shall have the sole responsibility for acquiring, installing and maintaining its or their 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. Authorized Users and 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. Authorized Users and participants 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. Authorized Users and participants shall establish adequate operational back-up systems and procedures to ensure recovery and continuity of their systems and operations in the event of a failure.
- 5.2. **Regulatory Compliance.** Authorized Users and participants 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.
- 5.3. **Access; Availability.** The State will use commercially reasonable efforts to make the core functions and features of CONNECT available to Authorized Users and participants twenty-four (24) hours a day, seven (7) days a week. Each Authorized User and Participant understands and agrees that, from time to time, CONNECT and/or certain features or functionalities of CONNECT may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment or CONNECT malfunctions; (ii) periodic maintenance procedures or repairs which the State may undertake from time

to time; or (iii) causes beyond the control of the State or which are not foreseeable by the State.

5.4. **Designated Contacts.** Designated Contacts must qualify as Authorized Users in order to have access to CONNECT on the Participant's or the Authorized Users' behalf. The number of Designated Contacts may not exceed a number that the State, in its sole discretion, deems reasonable and specific to the relevant Authorized Users and/or the Authorized User's sponsoring Participant. The State reserves the right to provide services under this Agreement only to and at the request of one of a Designated Contact. A participant or a group may change its or their Designated Contacts at any time by giving written notice of the change to the State.

6. **Provision and Use of Patient/Client Information.**

6.1. **Provision of Information.** Participant shall make Patient/Client Information available to the State and other participants through CONNECT in accordance with the Permitted Uses under this Agreement, any Policies and Procedures implemented by the State for such use, from time to time, and applicable state and federal law.

6.2. **Measures to Assure Accuracy of Information.** Participant shall use reasonable and appropriate efforts to assure that all of the Patient/Client Information it makes available to the State and other participants and Authorized Users is accurate, free from serious error, reasonably complete, and provided in a timely manner.

6.3. **Permissions to Use Information.** Participant grants to the State for the purposes set forth in this Agreement a perpetual, fully-paid, non-exclusive, royalty-free right and license to permit its agents and other participants to access all information it has made available through CONNECT in accordance with this Agreement.

6.4. **Malicious Software, Viruses, and Other Threats.** Participant shall use reasonable efforts to ensure that its connection to and use of CONNECT, including without limitation the medium containing any Data, Patient/Client Information or other information provided to CONNECT, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or "malware," viruses, worms, and Trojan Horses) which will disrupt the proper operation of CONNECT or any part thereof or any hardware or software used by the State in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause CONNECT or any part thereof or any hardware, software or data used by the State or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.

6.5. **Other participants.** Participant acknowledges that other participants have access to the Patient/Client Data it makes available to CONNECT through CONNECT. Such other participants have agreed to comply with the terms similar to those found in this Agreement and the Policies and Procedures, concerning use of the information; however, the actions of such other parties are beyond the control of the State. Accordingly, the State does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any Patient/Client Data on CONNECT resulting from any participant's actions or failures to act, which are beyond the control of the State.

6.6. **Unauthorized Access; Lost or Corrupt Data.** The State is not responsible for unauthorized access to Participant's transmission facilities or equipment by individuals or entities using CONNECT or for unauthorized access to, or alteration, theft, or destruction of Participant's data files, programs, procedures, or information through CONNECT, whether by accident, fraudulent means or devices, or any other method. Participant is solely responsible for validating the accuracy of all output and reports and

protecting Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. Participant waives any damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunction, security violations, or the use of third-party software.

7. Limited Warranty; Disclaimer; Limit of Liability and Indemnification.

7.1. **Limited Warranty.** The State warrants that the components of CONNECT are either owned by the State or used under license if owned by third parties, and that, to the best of the State's knowledge, Authorized Users' and Participants' access and use of CONNECT, as applicable to this Agreement and as contemplated by these Terms of Use, without modification and in accordance with the documentation, will not infringe the rights of any third party.

7.2. **Disclaimer.** THE WARRANTIES SET FORTH IN SECTION 7 ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY THE STATE. TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, THE STATE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, SUITABILITY, INTEGRATION, CURRENTNESS, ACCURACY, AND FITNESS FOR A PARTICULAR PURPOSE. THE STATE DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT CONNECT WILL MEET ANY AUTHORIZED USER'S OR PARTICIPANT'S REQUIREMENTS, THAT ACCESS TO OR OPERATION OR USE OF CONNECT WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS IN CONNECT, IF ANY, WILL BE CORRECTED, OR THAT RESULTS WILL BE TIMELY, ACCURATE, ADEQUATE OR COMPLETE. THE STATE DOES NOT WARRANT OR REPRESENT THAT USE OF CONNECT WILL RESULT IN COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, AND EACH AUTHORIZED USER AND EACH PARTICIPANT UNDERSTANDS THAT IT IS SOLELY RESPONSIBLE FOR ENSURING COMPLIANCE WITH ANY AND ALL APPLICABLE LAWS AND REGULATIONS.

7.3. **Limitation of Liability.** ANY LIABILITIES OF THE STATE OF MONTANA AND ITS OFFICIALS, EMPLOYEES AND AGENTS ARE GOVERNED AND LIMITED BY THE PROVISIONS OF TITLE 2, CHAPTER 9, MCA, FOR ALL ACTS, OMISSIONS, NEGLIGENCE, OR ALLEGED ACTS OR OMISSIONS, NEGLIGENT CONDUCT, AND ALLEGED NEGLIGENT CONDUCT RELATED TO USE AND OPERATION OF CONNECT. THE STATE AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES AND ASSIGNS, SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THESE TERMS OF USE OR OTHERWISE FOR LOST PROFITS, LOSS OF DATA, WORK STOPPAGE, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULL EXTENT ALLOWED UNDER APPLICABLE LAW, THE AGGREGATE LIABILITY OF THE STATE FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM SHALL BE LIMITED TO THE AMOUNT OF FEES PAID TO THE STATE BY THE AUTHORIZED USER OR PARTICIPANT, IF ANY. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY,

INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE PARTIES UNDERSTAND THAT THE FOREGOING DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY ARE MATERIAL TO THE TERMS OF THIS AGREEMENT AND THE STATE PERMITTING PARTICIPANT AND AUTHORIZED USERS TO USE THE SYSTEM AND ARE A REFLECTION OF THE RISKS ASSUMED BY THE PARTIES IN ORDER FOR THE STATE TO PROVIDE AUTHORIZED USERS AND PARTICIPANTS WITH ACCESS TO CONNECT FOR THE SPECIFIED FEES, IF ANY.

7.4. **Indemnification by Authorized Users and Participants.** The Participant and each Authorized User in their execution of this Agreement do hereby agree to and will, at all times applicable to this Agreement, even after this Agreement has been terminated, at their own expense, indemnify and hold the State and its employees, agents, representatives and assigns harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs and expenses (including reasonable attorneys' fees) to the extent that the foregoing result from or pertain to Authorized User's or Participant's use, misuse and operation of CONNECT, breach of these Terms of Use, gross negligence, or willful misconduct.

8. Confidentiality.

8.1. **Confidential Proprietary Information.** Each of the parties (the "**Disclosing Party**") may from time to time disclose to the other party (the "**Recipient**") Confidential Proprietary Information (as defined below). As used herein, "**Confidential Proprietary Information**" means: (a) any nonpublic information regarding the Disclosing Party's existing or proposed business, technology, products, services, internal structure and strategies of the Disclosing Party, specifically including, without limitation, the CONNECT software, software development, documentation, end-user materials, intellectual property, proposals, designs, concepts, methodologies, inventions, source or object code, developments, research, programs, databases, referral sources, customers, prospective customers, inventions, developments, "know-how," procedures, financial information or licensing and access policies; (b) any nonpublic information about Disclosing Party's financial condition; (c) any nonpublic information regarding these Terms of Use; (d) any information of the Disclosing Party when presented in printed, written, graphic, photographic or other tangible form (including information received, stored or transmitted electronically) and marked "Confidential" or similarly by the Disclosing Party; (e) any information disclosed orally by the Disclosing Party, if the Disclosing Party states at the time of first disclosure that such information is of a confidential nature and the Disclosing Party confirms the confidentiality of such information with the Recipient in writing within ten (10) days after first disclosure; and (f) all such information that, by its nature, a reasonable party would consider to be confidential or proprietary. Without limiting the generality of the foregoing, all information pertaining to Authorized Users or Participants provided to the State using CONNECT shall be deemed to be Confidential Proprietary Information of Authorized Users or Participants, as applicable. Confidential Proprietary Information shall not include information that: (i) is or becomes publicly available through no fault of Recipient; (ii) is or has been received in good faith by Recipient without restriction on use or disclosure from a third party having no obligation of confidentiality to Disclosing Party; or (iii) is or has been independently developed by Recipient without reference to Confidential Proprietary Information received from Disclosing Party, as evidenced by Recipient's written records. Patient health information shall not be considered

Confidential Proprietary Information of any party, but shall be subject to the confidentiality protections otherwise set forth in these Terms of Use. The State will provide the Disclosing Party timely notice of any administrative or legal request or contest from a third-party seeking release of Confidential Proprietary Information. If the State determines that such information is subject to the public right to know and must be released as requested, the State will provide the Disclosing Party with notice of the intended release five working days prior to the date of the proposed release. The notice period is intended to allow the Disclosing Party to make arrangements, if desired, to intervene through an appropriate legal forum to contest the release.

- 8.1.1. **Confidential Proprietary Information not to Include Participant's business and service information.** The definition of Confidential Proprietary Information excludes the information about Participant, its business and services, and its Authorized Users that is available to other participants in the CONNECT system ("Participant Information"), excluding Patient/Client data protected by Privacy Laws. The State may use and disclose such Participant information 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.
- 8.2. **Confidentiality and Non-Use.** Recipient will use reasonable efforts to avoid unauthorized disclosure of the Disclosing Party's Confidential Proprietary Information. Recipient will protect the Disclosing Party's Confidential Proprietary Information from unauthorized disclosure by taking at least those steps that Recipient uses to protect its own Confidential Proprietary Information, but in no event less than reasonable efforts. Recipient will not use the Disclosing Party's Confidential Proprietary Information except for purposes of fulfilling its obligations under these Terms of Use. Recipient may disclose the Disclosing Party's Confidential Proprietary Information to its employees, agents, service providers and other persons who need to know such Confidential Proprietary Information in connection with this Agreement and the purposes for this Agreement. Before doing so, Recipient will take reasonable steps to ensure that such persons will comply with the restrictions imposed on Recipient by the terms of this Agreement. The obligation to protect Confidential Proprietary Information will continue as long as Recipient possesses or has access to the Confidential Proprietary Information.
- 8.3. **Permitted Disclosure.** Recipient may disclose Confidential Proprietary Information as required by law or in compliance with any court or administrative order; provided that Recipient gives the Disclosing Party reasonable notice as permitted by law that such Confidential Proprietary Information is being sought by a third party in order to afford the Disclosing Party the opportunity to limit or prevent such disclosure.
- 8.4. **Confidentiality of Information Under HIPAA.** The parties acknowledge that the State transmits through CONNECT protected health information ("PHI") that is subject to certain requirements of the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The State has implemented and maintains administrative, physical and technological safeguards that the State believes reasonably and appropriately protect the confidentiality, integrity and availability of all personal information, including PHI. The State will maintain the confidentiality of all PHI that is within its possession, consistent with the requirements of such federal and state laws and regulations that are lawfully in effect and applicable to the State.
- 8.5. **Compliance with Laws; Confidential Patient/Client Information.** Both the State and Participant, and their agents and employees, will comply with the federal and state laws and regulations applicable to this Agreement, including without limitation, Privacy Laws and any and all other laws governing the use, security and privacy of Data of

Patients/Clients, Patient/Client consent for the use and transfer of Data and requirements for disclosure or exchange of such Data. State and Participant, and their agents and employees, will maintain the confidentiality of Data as required by state and federal law. The State's use of Data will be subject to this Agreement and the Business Associate Agreement set forth in Exhibit 1.

8.5.1. **Participant Confidentiality and Liability Assumption.** Participant understands and hereby agrees that, except for the obligations and/or liability specifically assumed by the State in this Agreement and the CONNECT Business Associate Agreement integrated herein by reference, Participant is responsible for all Privacy and Confidentiality requirements related to and/or governing the Data and Patient/Client Information that it discloses and uses through CONNECT, and Participant holds the State harmless for any action of Participant that causes any such Data or Patient/Client Information to be disclosed or used by Participant, its Authorized users, other participants and their Authorized Users, as a result of the actions of Participant under this Agreement and/or with regard to the usage of CONNECT by Participant, employees, agents and assigns, including, but not limited to Authorized Users.

9. Intellectual Property.

9.1. **The State Intellectual Property.** The State Intellectual Property (as defined below) is the valuable, confidential property of the State and its licensors. International intellectual property laws protect such the State Intellectual Property. Authorized Users and participants may use CONNECT as permitted herein and may not otherwise modify, adapt, translate, or create derivative or collective works based on CONNECT without the prior written consent of the State. As between the parties, the State owns all right, title, and interest in and to CONNECT and including, without limitation, all current and future enhancements, revisions, new releases and updates thereof and any derivative or collective works based thereon and all documentation thereto, all copyrights, trademarks, trade secrets, patents and goodwill therein, and all images, photographs, illustrations, graphics, audio and video created by or for the State therein (collectively, "the State Intellectual Property").

9.2. **Trademarks.** Any trademarks owned or controlled by the State, whether or not included in CONNECT and any logos relating to the foregoing are trademarks or service marks of the State and its licensors (collectively, "the State Trademarks"). All other trademarks, service marks and logos used in CONNECT, if any, are the trademarks, service marks or logos of their respective owners.

9.3. **Use of Intellectual Property.** Authorized Users and participants may not copy, reproduce, republish, store, upload, post, transmit, analyze, adapt, reformat, print, distribute, commercially exploit or publicly display the State Intellectual Property, CONNECT system, CONNECT software, the State Trademarks or the State Confidential Proprietary Information or any portion thereof in any manner whatsoever without the prior written consent of the State. Authorized Users and participants may not remove, reproduce, alter, use, display, modify, copy or obscure any copyrighted material, trademark, service mark, legal or other proprietary notices in or on any portions of the State Intellectual Property, the State Trademarks, or the State Confidential Proprietary Information or any portion thereof.

10. Suspension of Access; Termination.

10.1. **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.

- 10.2. **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.
- 10.3. **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.
- 10.4. **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 10.4 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.

11. Complete Agreement; No Waiver.

- 11.1. This Agreement includes, and incorporates by reference:
 - 11.1.1. The Participation Agreement for CONNECT referral system executed by the Participant;
 - 11.1.2. CONNECT System Business Associate Agreement;
 - 11.1.3. Any additional agreements signed by the State and Participant in relation to the Authorized User's and its sponsoring Participant's participation in the CONNECT system
 - 11.1.4. CONNECT Policies and Standards, as applicable
- 11.2. 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.

12. Other Provisions and Legal Terms

- 12.1. **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.
- 12.2. **Governing Law.** This Agreement shall be construed and controlled by the laws of the State of Montana, without reference to conflict of laws principles.
- 12.3. **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.
- 12.4. **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.

- 12.5. **No Third-Party Beneficiaries.** This Agreement is entered into for the benefit of the Parties and not for the benefit of any third party.
- 12.6. **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.
- 12.7. **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.
- 12.8. **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.
- 12.9. **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.
- 12.10. **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.
- 12.11. **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.
- 12.12. **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.
- 12.13. **Headings.** The captions and headings of these Terms of Use are included for ease of reference only.
- 12.14. **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.
- 12.15. **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.

PARTICIPANT

Participant Name

Authorized User and Level of User

Address

City, State, Zip

Email

Phone

THE STATE

State of Montana Department of Public
Health and Human Services

Address

City, State, Zip

Email

Phone

FOR REVIEW