

NEXUS SD PARTNER AGREEMENT

Introduction

Nexus SD is a platform for information regarding seeker needs. It contains self-reported assessment information from seekers who have provided a host of information to the South Dakota Department of Health. The information includes a range of issues regarding the potential need for social services. Each seeker's disclosures are different and may include demographic, employment, education, income, housing, disabilities, health, treatment, and insurance data. Moreover, assessment data may include information regarding utility service, family and community support, veteran status, urgent needs for social services, languages used, financial strain, living situation, food needs, transportation needs and ethnicity.

The purpose of Nexus SD is to serve as a statewide collaboration of health care, human and social service providers sharing information using an integrated technology platform and referral system to coordinate whole-person care. This will streamline connection between health care, human and social service providers to address social needs and advance health improvement among populations at higher risk and that are underserved.

This contract contains the agreements between the partners of Nexus SD and the South Dakota Department of Health, the State entity that operates the exchange.

Definitions

- "Nexus SD Associate" - This term shall have the meaning contained in 45 C.F.R. §160.103.
- "Covered entity" - This term shall have the meaning contained in 45 C.F.R. § 160.103.
- "Data Request" - This term shall mean a request to the exchange from a partner for data from the exchange whether the request involves health information or non-health information regarding a family or person.
- "Data Aggregation Request" (or aggregated data request) - This term shall mean a request for data that provides no access to identifying information of anyone.
- "Domains" - This term shall mean a data request regarding a singular person or a family.
- "Health Oversight Agency" - This term shall have the meaning contained in 45 C.F.R. § 164.501.
- "Health Insurance Portability and Accountability Act (HIPAA)" - This term shall mean the federal act found at 42 U.S.C. §1320d-9 and implementing privacy regulations found at 45 C.F.R. parts 160 and 164.
- "Minimum necessary standard" - This term shall have the meaning contained in 45 CFR §164.502(b) and the implementation standards in 45 C.F.R. § 164.514(d). This term shall include the exceptions to the rule.

- “Nexus SD” - This term shall mean the platform used by the South Dakota Department of Health and its participating partners authorized by SDCL 1-43-19 to access information of persons consenting to be placed on the platform.
- “Partner(s)” - This term shall mean any organization participating in Nexus SD who has entered into a formal agreement with the South Dakota Department of Health.
- “Provider(s)” - This term shall mean any organization that offers health, human, or social services as part of Nexus SD. These organizations may or may not be an active partner of the South Dakota Department of Health.
- “Opt-in” - This term shall mean the process of when a seeker signs a consent for participation in Nexus SD.
- “Opt-out” - This term shall mean the process of when a seeker decides to no longer participate in Nexus SD. After the date of the opt-out execution, the seeker’s information is only available to their care team members or Nexus SD system administrators. The seeker’s information is no longer searchable or shareable to other Nexus SD members aside from in the form of deidentified and aggregated data.
- “Seeker” - This term shall mean the person who receives a Notice of Privacy Practices and executes a consent for participation in Nexus SD

AGREEMENT

The South Dakota Department of Health enters into this agreement with _____
_____ (hereinafter referred to as _____ or
PARTNER) at the following address _____ on _____
_____ (date) for access to Nexus SD.

The term of this agreement is for a period of five years from _____
_____ to _____.

In exchange for access to Nexus SD, the PARTNER makes the **following agreements** during the term of this agreement.

1. The PARTNER shall have a single person who is the contact for this agreement. The contact shall be _____. In the case the contact person changes, PARTNER agrees to notify Nexus SD using the notification provision in the Policy and Systems Operation Manual within thirty (30) calendar days of the change.
2. The PARTNER **agrees** to allow only authorized persons with log-on credentials to access Nexus SD.
3. The PARTNER **agrees** that it can add persons to Nexus SD only using a signed opt-in consent form along with proof of the receipt of a Notice of Privacy Practices.
4. The PARTNER **agrees** to use the "minimum necessary standard" provided in the HIPAA Act under 45 CFR §§164.502(b), 164.514 (d).
5. The PARTNER **agrees** to execute a Nexus SD Associate Agreement in the case the PARTNER is not a covered entity. Exhibit A. Nexus SD agrees that for disclosures mandated by law the Nexus SD Associate agreement does not operate to allow disclosures of data to a non-covered entity unless the request is for de-identified and aggregated data.
6. The PARTNER **agrees** that when it has notice that a seeker has executed an Opt-out of Nexus SD, the PARTNER will not make a data request after the date of the execution of the Opt-out.
7. The PARTNER **agrees** to abide by the Nexus SD Policy and System Operation Manual.
8. The PARTNER **agrees** that its agents will make data requests solely for business purposes of the Partner.
9. The PARTNER **agrees** to notify Nexus SD of PARTNER ownership changes within fifteen (15) days of such change.

10. The PARTNER **agrees** that if it is a covered or non-covered entity, it may not market to seekers without the consent of seekers.

INDEMNIFICATION:

Partner agrees to indemnify the State of South Dakota, its officers, agents and employees, from and against all actions, suits, damages, liability or other proceedings that may arise as a result of the PARTNER's use of Nexus SD, or its unauthorized disclosure of information based on the terms of this agreement.

TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event any party alleges a breach of the agreement the party alleging a breach shall advise the other party of the issue and request a cure of the breach within thirty (30) days.

NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Partner Contact Person on behalf of Partner, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party. The parties may communicate electronically if consent is provided.

CONTROLLING LAW AND VENUE:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

THIRD PARTY BENEFICIARIES:

This Agreement is intended to govern only the rights and interests of the parties named herein. It is not intended to create, does not and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any third party in any matters, civil or criminal.

ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned without the express prior written consent of State. Partner's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. This Agreement may not be amended except in writing, which writing shall be expressly identified as part hereof and be signed by an authorized representative of each of the parties hereto.

SEVERABILITY:

If any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

WAIVER OF BREACH:

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision in this Agreement.

SOVEREIGN IMMUNITY:

Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers, or employees.

HEADINGS:

The headings in this Agreement are for convenience and reference only and shall not govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

INTEGRATION:

This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements, and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.

Nexus SD Signature

Partner Signature

Printed Name

Printed Name

Title

Title

Email

Email

Phone Number

Phone Number

Date

Date