

NEXUS HEALTH RESOURCES, INC. TERMS OF USE

THIS LEGAL AGREEMENT (THE “TERMS OF USE” OR THE “AGREEMENT”) BETWEEN YOU (THE “CUSTOMER”) AND NEXUS HEALTH RESOURCES, INC., A NEW YORK CORPORATION (HEREINAFTER “NEXUS”) GOVERNS YOUR USE OF THE NEXUSCONNEXIONS® PRODUCT, SOFTWARE, SERVICES, WEBSITES, AND RELATED ANALYSIS OF INFORMATION IN CONNECTION THEREWITH ARE ALL SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS AND ALL APPLICABLE LAWS AND REGULATIONS (COLLECTIVELY REFERRED TO AS THE “SERVICES” AND/OR “PRODUCT”). IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THE FOLLOWING TERMS. IF YOU CHOOSE TO ACCESS OR USE THE PRODUCT AND SERVICE, YOU ARE AGREEING THAT THESE TERMS WILL APPLY.

1. DESCRIPTION OF THE SERVICE

The Product provides a consolidated solution for care coordination of patients, management tools for reducing hospital readmissions and analysis and solutions for increasing overall patient well-being. The Services are provided solely for its internal business purposes and solely in connection with care coordination.

2. AUTHORIZED USERS

Customer shall provide Nexus with a list of specific users who will be authorized access to the Services (each, an “Authorized User”). Customer shall be solely responsible for providing access to its Authorized Users and for removal of any of its Authorized Users. Customer is prohibited from allowing access to the Services by anyone who is not an Authorized User. Nexus will routinely monitor the system for patterns of activation/deactivation that are outside the range of what would be expected from normal use.

3. ACCEPTABLE USE.

Customer and its Authorized Users shall use the Services exclusively for its healthcare and medical related practice and in compliance with these Terms of Use, the Master Service Agreement, and all applicable laws, regulations and industry standard best practices. Customer will ensure Authorized Users do not to post or upload any content or data which (i) contains a virus or other harmful or malicious code, files, scripts, agents or programs; (ii) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (iii) otherwise violates any applicable law. Customer further agrees and shall ensure that Authorized Users refrain from interfering with or disrupting networks connected to the Services, refrain from interfering with another entity's use of similar services and comply with all regulations, policies and procedures of networks connected to the Services. Nexus may remove any violating content posted on the Services or transmitted through the Services without notice. Nexus may suspend or terminate any User’s access to the Services in the event that Nexus determines that an Authorized User has violated these Terms of Use.

4. HOSTING ENVIRONMENT

The Services will be hosted on a server that is maintained by Nexus or a third party designated by Nexus. Hosting facilities chosen by the Nexus must adhere to reasonable security standards that are no less protective than the security standards at facilities where Nexus stores and processes its own information of a similar type. Customer shall use industry standard systems and procedures, including protection against viruses, to ensure the security and confidentiality of its data used in conjunction with the Services. Hosting of Services does not include any hosting of, maintenance or storage of electronic medical records (“EMR”). Storage and security of EMR is the sole responsibility of the Customer.

5. USE OF DATA

Customer shall be solely responsible for the accuracy, quality, integrity and legality of data, uploaded in NexusConnexions. Customer shall own, or shall obtain, all proprietary rights necessary, including copyrights, patents, and trade secrets, in and to any content or data it develops or uploads for use in NexusConnexions. Customer authorizes Nexus and the data center to serve as the host and repository for the data Customer enters into NexusConnexions. Customer acknowledges and agrees that NexusConnexions will not be a repository or storage point of EMR. Nexus shall use reasonable skill and due care in providing the Product and Services, but Nexus does not guarantee or warrant that any content Customer may transmit, receive or access through the Product will be accurate and not be subject to inadvertent damage, corruption, loss.

6. MONITORING DATA AND USAGE

Nexus reserves the right to utilize data stored by Customer in NexusConnexions to verify compliance with the terms of this Agreement. Nexus may monitor the usage, performance and operation of the Services using electronic, remote and other means and without notice to Customer.

7. PASSWORDS.

Customer is responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by its Authorized User. Customer is entirely responsible for any and all activities that occur under its account. Customer shall immediately notify Nexus of any unauthorized use or any other breach of security known to Customer. Nexus shall have no liability for any loss or damage arising from Customer’s failure to comply with these requirements.

8. CONFIDENTIAL INFORMATION

All data is owned by Customer and is to be strictly held as confidential. All data that is purposefully or inadvertently provided to Nexus by any transmission method will be kept confidential and Nexus will not disclose the Confidential Information to any person. Nexus will protect the Confidential Information against unauthorized disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care. In the event of any disclosure of confidential information, Nexus will immediately inform the customer of such transmission.

The Customer agrees that the Product relies on the input, delivery and processing of sensitive data

and that, in the course of performance hereunder, the Customer or any party will transmit to Nexus Protected Health Information (“PHI”) and personally identifiable information that will be restricted from disclosure including, but not limited to, credit card information, social security numbers and information restricted under the Health Insurance Portability and Accountability Act (HIPAA). Nexus agrees and acknowledges that it is a “Business Associate” of Customer under HIPAA and agrees to be bound by the privacy and security regulations of HIPAA as they pertain to Business Associates.

9. CUSTOMER RESPONSIBILITY

Customer agrees that it will NOT:

- i. sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Services, the Site or access thereto;
- ii. decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of NexusConnexions, in whole or in part, for competitive purposes, for creating derivative works, or otherwise;
- iii. apply systems to extract or modify information in the Services using technology or methods such as those commonly referred to as “web scraping,” “data scraping,” or “screen scraping”;
- iv. allow access to, provide, divulge or make available the site or the content to any Authorized User other than those who have authorization to access;
- v. write or develop any derivative works based upon NexusConnexions; or modify, adapt, translate or otherwise make any changes to NexusConnexions or any part thereof;
- vi. use the Services to provide processing services to third parties, or otherwise use the same on a ‘service bureau’ basis;
- vii. use the Services in a manner that delays, impairs, or interferes with system functionality for others or that compromises the security or integrity of any data, equipment, software, or system input or output;
- viii. enter data in the Services that is threatening, harmful, lewd, offensive, defamatory, or that injures or infringes the rights of others;
- ix. use the Services or any part or aspect of thereof for any unlawful purpose or to mislead or harass anyone;
- x. disclose or publish, without Nexus’s prior written consent, performance or capacity statistics or the results of any benchmark test performed on or in relation to the Services;
or

- xi. remove from any Content, or other materials owned by Nexus, patent, copyright, trademark or other proprietary notices. Proprietary notices, including, without limitation, disclaimers and patent, copyright and trademark notices, must be reproduced on any authorized copies.

10. INTELLECTUAL PROPERTY RIGHTS

The Product and Services and all related intellectual property rights are the exclusive property of Nexus. All right, title and interest in and to the Product and Services, any modifications, translations, or derivatives thereof, even if unauthorized, and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual property rights in the Services remain exclusively with Nexus. All rights not granted to Customer in this Agreement are reserved to Nexus. No ownership of the Product passes to Customer. Nexus may make changes to the Services at any time without notice. Except as otherwise expressly provided, Nexus grants no express or implied right under Nexus's patents, copyrights, trademarks, or other intellectual property rights.

11. NO SUBSTITUTE OF MEDICAL JUDGMENT

Customer acknowledges and agrees that the Services provided for herein are not intended to be a substitute for the professional medical treatment, judgment, advice, opinions, or diagnosis of a healthcare professional, Customer or Authorized User. Customer accepts all responsibility and risk of use of its use of the Services and any other services provided for herein in connection with any diagnosis, advise, judgment or treatment by Customer or its Authorized Users, and is responsible for injury, damage, and or other loss related to such diagnosis or treatment, irrespective of whether such injury, damage and/or loss results from its use of the Services and any other services provided for herein. CUSTOMER FURTHER AGREES THAT THE SOLE AND EXCLUSIVE RESPONSIBILITY FOR ANY MEDICAL DECISIONS OR ACTIONS WITH RESPECT TO A PATIENT'S MEDICAL CARE AND FOR DETERMINING THE ACCURACY, COMPLETENESS OR APPROPRIATENESS OF ANY DIAGNOSTIC, CLINICAL OR MEDICAL INFORMATION RESIDES SOLELY WITH THE HEALTHCARE PROVIDER. CUSTOMER ACCEPTS ALL LIABILITY FOR SUCH DIAGNOSIS OR TREATMENT.

12. DISCLAIMER OF WARRANTIES

TO THE GREATEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEXUS DOES NOT GUARANTEE OR WARRANT THAT THE DATA CUSTOMER PROVIDES TO NEXUS THROUGH THE PRODUCT AND SERVICES WILL NOT BE SUBJECT TO INADVERTENT DAMAGE, CORRUPTION, LOSS, OR REMOVAL IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, AND NEXUS SHALL NOT BE RESPONSIBLE SHOULD SUCH DAMAGE, CORRUPTION, LOSS, OR REMOVAL OCCUR.

THE CONTENT AND ALL SERVICES AND PRODUCTS ASSOCIATED WITH NEXUS OR PROVIDED THROUGH THE PRODUCT AND SERVICE ARE PROVIDED TO YOU ON AN "AS-IS" AND "AS AVAILABLE" BASIS. NEXUS MAKES NO REPRESENTATIONS OR

WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE CONTENT OR OPERATION OF THE PRODUCT OR OF THE SERVICES. YOU EXPRESSLY AGREE THAT YOUR USE OF THE PRODUCT AND SERVICES IS AT YOUR SOLE RISK. NEXUS AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN PARTICULAR, NEXUS AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT (I) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS; (II) CUSTOMER'S USE OF THE PRODUCT OR SERVICE WILL BE TIMELY, UNINTERRUPTED, SECURE OR ERROR-FREE; (III) ANY INFORMATION OBTAINED BY CUSTOMER AS A RESULT OF THE PRODUCT OR SERVICE WILL BE ACCURATE OR RELIABLE; AND (IV) ANY DEFECTS OR ERRORS IN THE SOFTWARE PROVIDED TO CUSTOMER AS PART OF THE PRODUCT OR SERVICE WILL BE CORRECTED.

NEXUS MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, RELIABILITY OR COMPLETENESS OF THE PRODUCT OR OF THE SERVICE. NEXUS MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE THAT THE CONTENT THAT MAY BE AVAILABLE THROUGH THE SERVICE IS FREE OF INFECTION FROM ANY VIRUSES OR OTHER CODE OR COMPUTER PROGRAMMING ROUTINES THAT CONTAIN CONTAMINATING OR DESTRUCTIVE PROPERTIES OR THAT ARE INTENDED TO DAMAGE, SURREPTITIOUSLY INTERCEPT OR EXPROPRIATE ANY SYSTEM, DATA OR PERSONAL INFORMATION.

13. LIMITATION OF LIABILITY

NEXUS, ITS AFFILIATES, AND ITS PARTNERS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF OR RELATED TO THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO CLAIMS FOR LOSS OF DATA, GOODWILL, OPPORTUNITY, REVENUE, PROFITS, OR USE OF THE SERVICES, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF NEXUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL NEXUS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO NEXUS, EITHER BY ITS PARTNERS IN RELATION TO THE PRODUCT, OR BY ITS CUSTOMER FOR THE APPLICABLE PRODUCT OVER THE ONE (1) YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE SERVICES THAT DIRECTLY CAUSED THE LIABILITY.

14. ASSIGNMENT

Nexus may assign this Agreement to any other person, individual or entity and may assign this Agreement as a result of a merger, consolidation, amalgamation, or other transaction or series of transactions without the consent or approval of the Customer. This Agreement shall be binding on the parties and their successors (through merger, acquisition or other process) and assigns.

15. GOVERNING LAW

THE PARTIES AGREE THAT THIS AGREEMENT, ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, COMMON LAW, AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND NEXUS ARISING FROM OR RELATING TO THIS AGREEMENT, ITS INTERPRETATION, OR THE BREACH, TERMINATION OR VALIDITY THEREOF, THE RELATIONSHIPS WHICH RESULT FROM THIS AGREEMENT, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW.

16. DISPUTE RESOLUTION AND BINDING ARBITRATION

CUSTOMER AND NEXUS ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT CUSTOMER WOULD HAVE IF CUSTOMER WENT TO COURT, SUCH AS ACCESS TO DISCOVERY, MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND NEXUS, its Partners, agents, employees, principals, successors, assigns, affiliates arising out of or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from this Agreement (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), Nexus's advertising, or any related purchase MUST BE SUBMITTED TO BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (AAA) according to its Commercial Rules, Optional Rules for Emergency Measures of Protection, and Expedited Procedures, regardless of the amount in controversy. The arbitration shall be decided by only one arbitrator and the arbitration must take place in Orange County, New York. The arbitrator shall award the prevailing party its arbitration costs, arbitrator fees, expert witness fees, and attorney fees. The arbitration award may be enforced by the courts of Orange County, New York and any other court of competent jurisdiction.

17. INDEMNITY

Customer agrees to defend, indemnify and hold Nexus, its partners, affiliates, subsidiaries, directors, officers, employees, agents, contractors, and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by a third party, relating to or arising from:

(a) any content Customer submits, transmits, or otherwise makes available through the Product or Services; (b) Customer's or its employees', agents', third party contractors' or assigns' use of the Product or Services; (c) any violation by Customer of this Agreement; (d) any action taken by Nexus as part of its investigation of a suspected violation of this Agreement or as a result of its finding or decision that a violation of this Agreement has occurred; or Customer's violation of any rights of another; or (e) any failure by Customer to maintain compliance as such compliance relates to all applicable laws, regulations, and governmental and third party payor requirements, policies and procedures governing or controlling coding, documentation or billing with respect to all healthcare and medical services provided by Customer and Authorized Users to their patients and clients.

18. GENERAL PROVISIONS

This Agreement constitutes the entire agreement between Customer and Nexus and governs Customer's use of the Product and Service. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. The failure of Nexus to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. Customer agrees that, except as otherwise expressly provided in this Agreement, there shall be no third-party beneficiaries to this agreement.

19. FORCE MAJEURE

In the event that either Customer or Nexus is unable to perform any of its obligations under this Agreement because of natural disaster, terrorism, fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, acts of third parties, the failure of internet access, war, acts of god, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, actions or decrees of governmental bodies or communication line failure not the fault of the affected party or other causes beyond such party's reasonable control, the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance.

20. MODIFICATIONS

Nexus may modify this Agreement from time to time. Any and all changes to this Agreement will be posted on Nexus's website at <http://www.nexushealthresources.com>. In addition, the Agreement will always indicate the date it was last revised. You are deemed to accept and agree to be bound by any changes to the Agreement when you use the Services after those changes are posted.

21. HEADINGS

The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

22. COMPLIANCE WITH LAW

Each party agrees to conduct all activities under this Agreement in a manner that complies with all applicable federal, state and local laws.