

## GEORGIA MEDICAID AND PEACHCARE FOR KIDS®: PROVIDER USER AGREEMENT FOR CLINICAL VIEWER

The State of Georgia Department of Community Health, Division of Medical Assistance Plans (“DCH” or “Medicaid”) has entered into that certain Georgia Health Information Network Member Agreement dated February 6, 2014 (the “Member Agreement”) with Truven Health Analytics Inc. (“Vendor”), a vendor engaged by GaHIN, Inc. (“Network Facilitator”), in order to participate as a Member in a statewide exchange of Health Data (the “Network”) by and among Members and their respective Member Affiliates (as more fully described in the Member Agreement (a copy of which may be accessed below). Pursuant to the terms and conditions of the Member Agreement, DCH is requiring that any User (as hereinafter defined) that is interested in becoming a Member Affiliate of DCH to enter into a written agreement which governs such Member Affiliate’s access or use of the Network.

In accordance with the foregoing, this **Georgia Medicaid and PeachCare for Kids Provider User Agreement for Clinical Viewer** (the “Agreement”) is made and entered into by and between DCH and you, the “User,” a Health Care Provider enrolled in Medicaid and PeachCare for Kids or a care management organization engaged by Medicaid (a “Medicaid Care Management Organization”) (collectively, the “Medicaid Program”) for purposes of providing you with access to the Network via the Clinical Viewer and Georgia Medicaid Management Information System (“GAMMIS”).

**PLEASE READ THE TERMS OF THIS AGREEMENT CAREFULLY.** By accessing or using the Network via the Clinical Viewer/GAMMIS, you are hereby acknowledging, agreeing, representing and warranting that:

- (1) Your access and use of the Network via the Clinical Viewer/GAMMIS is **voluntary, free of charge and not a condition precedent or antecedent to you participating in the Medicaid Program**. If you choose to participate in the Network, you are obligated to comply with all Applicable Laws and the terms and conditions of this Agreement, the **Member Affiliate Agreement**, all applicable terms of the **Member Agreement** and **Subscription Agreement**, and all other agreements, contracts, policies, procedures, and guidelines incorporated by reference herein or therein, including but not limited to, the **Network Operating Policies and Technical Requirements**, and any policies and procedures now or hereinafter adopted by DCH which govern and control your access, participation in, and use of the Network (including, but not limited to, **Policy # 001**, (the “DCH Network Policies and Procedures”)).
- (2) You have read and are familiar with the terms and conditions of this Agreement and any and all agreements, contracts, policies, procedures, manuals, notices and guidelines incorporated by reference herein (including, but not limited to, the Member Affiliate Agreement, the Member Agreement, the Network Operating Policies and Technical Requirements, and the DCH Network Policies and Procedures);
- (3) You are **not currently a Member Affiliate of any other Member and shall only use and access the Network as a Member Affiliate of DCH**. If at any point in time during the term of this Agreement you learn or become aware of the fact that you may become a Member Affiliate of another Member, you shall immediately notify DCH of such fact. Becoming a Member Affiliate of another Member of the Network shall result in the immediate termination of this Agreement and your access, use of, and participation in the Network as a Member Affiliate of DCH shall immediately terminate.
- (4) You shall only use and access the Network solely for the purposes permitted under Applicable Laws, the terms and conditions of this Agreement, and all other agreements, contracts, policies, procedures, and guidelines incorporated by reference herein. You shall not access or use the Network in

any way that shall cause DCH to infringe upon or breach any of its obligations or responsibilities under the Member Agreement.

(5) If and to the extent that there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any agreement, contract, policy, procedure, manual, notice, or guideline incorporated by reference herein (including, but not limited to, the Member Agreement and the Network Operating Policies and Technical Requirements), the terms and conditions of this Agreement shall govern and control.

(6) You acknowledge and agree that information retrieved from or maintained in GAMMIS does not include any Health Data obtained by you from the Network via the Clinical Viewer.

## **I. Definitions.**

As used herein, the following terms shall have the meaning ascribed to them.

“You” shall mean you, a licensed Health Care Provider enrolled in the Medicaid Program for purposes of providing health care services to Medicaid Members and which, upon execution of this Agreement and the Member Affiliate Agreement, shall be a Member Affiliate of DCH.

“Member Affiliate Agreement” shall mean that Georgia Department of Community Health, Division of Medical Assistance Plans Member Affiliate Agreement by and between you and DCH effective as of even date herewith.

All other capitalized terms not otherwise defined herein shall have the meanings set forth in the Member Affiliate Agreement or Member Agreement, copies of which may be accessed below.

## **II. User Access Authorization.**

### **A. Permitted Purposes.**

You represent and warrant that you shall, in compliance with Applicable Law, request, receive, disclose and transmit Health Data solely relating to Medicaid Beneficiaries to and from other Members and their respective Member Affiliates (including other Member Affiliates of DCH) only for the purposes of:

- i. Treatment. Treatment of the Individual who is the subject of the PHI requested or received.
- ii. Payment. Payment as defined at 45 C.F.R. § 164.501.
- iii. Health Care Operations. Health Care Operations as defined at 45 C.F.R. § 164.501.
- iv. Public Health. Public Health activities and reporting as permitted by HIPAA Regulations set forth at 45 C.F.R. § 164.512(b), HITECH, and other Applicable Law.

Outside of the foregoing, you may only request, receive, disclose and transmit Health Data as required by and in accordance with Applicable Law.

### **B. Other Purposes.**

You cannot request, receive, disclose or transmit Health Data for any purpose other than those expressly set forth herein, including, but not limited to, comparing patient volumes or practice patterns, economic credentialing or tiering, underwriting, denial of coverage, or reselling de-identified data.

**C. Permitted Re-Disclosures.**

Any re-disclosure of Health Data shall only be permitted in accordance with Applicable Law.

**III. Compliance, Safeguards and Policies.**

**A. Compliance.**

Your use of the Network shall comply with the Network Operating Policies and Technical Requirements, the DCH Network Policies and Procedures, this Agreement, the Member Affiliate Agreement, all applicable provisions of the Member Agreement, any Business Associate Agreement entered into by you and Vendor, and Applicable Law.

**B. Safeguards.**

You shall (a) be responsible for maintaining a secure environment that supports access to, use of, and the continued development of the Network and Clinical Viewer; (b) use appropriate safeguards to prevent use or disclosure of PHI by you other than as permitted by this Agreement, including appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI through the Network. Appropriate safeguards shall be those identified in Applicable Laws, including, but not limited to, the HIPAA Security Rule, 45 C.F.R. Part 160 and 164, Subparts A and C; and (c) shall comply with any Network Operating Policies and Technical Requirements and the DCH Network Policies and Procedures.

You shall not knowingly or inadvertently permit any other person access to or use of the Clinical Viewer, the Network or any Health Data requested, received, disclosed or transmitted via the Network for any purpose that is not expressly authorized under and pursuant to the terms of this Agreement or any other agreement, policy and procedure incorporated by reference herein or Applicable Law.

**C. System Access Policies.**

You shall have written policies and procedures that require your agents, employees, and independent contractors (as applicable) to maintain the confidentiality and restrict the disclosure or re-disclosure of Health Data in accordance with this Agreement, all agreements, documents, policies and procedures incorporated herein, and Applicable Law. You represent that you, through your agents, employees, and independent contractors, shall have the ability to monitor and audit all access to and use of your System as it relates to this Agreement for system administration, security and other legitimate purposes.

**IV. Breach.**

You shall provide, within 3 calendar days of discovery (as such term is defined under 45 C.F.R. §164.410) of Breach (as defined herein), a written report to the DCH HIPAA Privacy & Security Officer regarding any use, disclosure, receipt, request, transmission or access of Health Data retrieved from the Network/Clinical Viewer which is not permitted or provided for under this Agreement or Applicable Laws (a "Breach"). Such report shall include: (a) a one or two sentence description of the Breach; (b) a description of the roles of the people involved in the Breach (e.g., employees, services providers,

unauthorized persons, etc.); (c) a description, but not the provision of PHI, subject to the Breach; (d) a description of those likely impacted by the Breach; (e) the number of individuals or records impacted/estimated to be impacted by the Breach; (f) actions taken by you to mitigate the Breach; (g) a description of the current status of the Breach (i.e. under investigation or resolved); (h) a description of the corrective action taken and steps planned to be taken to prevent any similar or additional Breach and (i) any such other information requested by DCH. Provided, however, that the notification required by this Section shall not include any PHI. You will securely submit the written report on the form provided by DCH in accordance with the instructions included therein.

**V. Term and Termination.**

**A. Term.**

The initial term of this Agreement shall be for a period of one (1) year commencing on the date you access the Network. Upon the expiration of the initial term, this Agreement shall automatically renew for successive one-year terms unless terminated.

**B. Termination by User.**

You may terminate your participation in the Network for convenience at any time, by giving DCH at thirty (30) business days' prior written notice. Once proper notice is given, DCH, in conjunction with Vendor, shall terminate your access to the Network as of the date of termination specified in the notice. Once your access is terminated, Vendor shall provide notice of such termination to the remaining Members.

**C. Suspension by DCH.**

Upon either DCH or Vendor completing a preliminary investigation and determining that there is a substantial likelihood that (i) your acts or omissions create an immediate threat or will cause irreparable harm to DCH, another Member, a Member Affiliate, the Network, Vendor, Network Facilitator, or an Individual whose PHI is exchanged through the Network or any other third party; or (ii) you have breached the Permitted Purposes, DCH shall, in conjunction with Vendor and with concurrence by Network Facilitator, summarily suspend your access to the Network in order to address such threats and pending the submission and approval of a corrective action plan, as provided in this Section. Within twelve (12) hours of such suspension (i) Vendor shall provide general notice of such suspension to all Members (and Member Affiliates); and (ii) DCH, in conjunction with Vendor, shall provide you with a written summary of the reasons for the suspension. You shall use reasonable efforts to respond to the suspension notice by providing DCH with a detailed plan of correction or an objection to the suspension within three (3) business days or, if such submission is not reasonably feasible within three (3) business days, then at the earliest practicable time. If you submit a plan of correction, DCH, in conjunction with Vendor, will within fifteen (15) business days review and either accept or reject the plan of correction. If the plan of correction is accepted, Vendor will, upon receipt of approval from DCH and your completion of the plan of correction, reinstate your access to the Network and provide notice to all Members (and Member Affiliates) of such reinstatement. If the plan of correction is rejected, your suspension will continue for period of thirty (30) days during which you shall work in good faith to develop a plan of correction that is acceptable to both DCH and Vendor. If you cannot develop a plan of action that is acceptable to both DCH and Vendor after such thirty (30) day period, DCH may terminate this Agreement.

**D. Termination by DCH.**

DCH may terminate this Agreement:

- i. At any time, for the convenience of DCH in its sole discretion;
- ii. Immediately upon DCH's rejection of a plan of correction;
- iii. Immediately if you have violated any of the terms, conditions, notices, manuals, policies and procedures applicable to your participation in the Medicaid program (including, but not limited to, those terms and conditions contained in your respective provider enrollment agreement and the Medicaid Part I Policies and Procedures for Medicaid/Peachcare for Kids), as such terms, conditions, notices, manuals, policies and procedures may be amended from time to time;
- iv. Immediately if you have had your participation in the Medicaid program or any other state or federal healthcare program (including, but not limited to, those programs established by Titles XVIII (Medicare) and XXI (the Children's Health Insurance Program) of the Social Security Act (42 U.S.C. § 301 *et seq.*)) been rendered inactive, terminated or otherwise suspended, either voluntarily or involuntarily, as a result of a breach or violation of any Applicable Laws or terms, conditions, policies, procedures, manuals, notices, or guidance governing, controlling or authorizing your participation in such program, or an investigation, determination, finding, holding, or other civil or criminal proceeding by or conducted on behalf of any judicial, administrative or local, state or federal agency, department, division, office, or program or any agent, contractor, subcontractor, or employee thereof;
- v. Immediately if you have been, during the term of this Agreement, listed as a party or person that is excluded, suspended, or otherwise barred from participation in Medicare, Medicaid or any other federal or state healthcare program by any local, state or federal agency, department, division, office, or program, or any agent, contractor, subcontractor, or employee thereof, including, but not limited to the OIG;
- vi. Immediately if you have breached any of the terms and conditions of this Agreement (including, but not limited to, any documents, policies, procedures and guidelines incorporated by reference herein, including, but not limited to, the Member Agreement and the Network Operating Policies and Technical Requirements) and all applicable provisions which govern your use or access of the Network as a Member Affiliate of DCH under and pursuant to the Member Agreement;
- vii. Immediately if your use or access of the Network in any way violates any Applicable Law;
- viii. Immediately if DCH or Vendor terminate or suspend the Member Agreement for any reason cited therein;
- ix. Immediately if you provide notice to DCH that you have learned or become aware of the fact that you may become a Member Affiliate of another Member of the Network; or
- x. Immediately if DCH determines in its sole discretion that your use, access or participation in the Network may cause or result in DCH violating, breaching, infringing upon or failing to fulfill any of its obligations and responsibilities under the Member Agreement

#### **E. Appeal of Termination.**

You may appeal termination of your access to the Network by notifying DCH. However, during the pendency of such appeal, your access to Health Data or any other service provided by virtue of this Agreement shall remain terminated.

#### **F. Effect of Termination.**

Upon termination of this Agreement for any reason, you shall no longer have any rights to use the Network (unless such Member Affiliates have an independent right to access the Network through another Member). All of your obligations under and pursuant to this Agreement shall terminate; provided, however, that any obligations of this Agreement, the Member Affiliate Agreement or the Member Affiliate which are intended by their respective terms to survive termination of this Agreement shall.

#### **G. Disposition of Health Data Upon Termination.**

Upon termination of this Agreement, you shall dispose or retain all Health Data (including but not limited to Sensitive Health Information) in accordance with Applicable Law, any data retention policies and procedures that you maintain, this Agreement and any and policies, procedures, guidance, notices or other agreements incorporated by reference herein, the Member Affiliate Agreement, the Member Agreement, the Network Operating Policies and Technical Requirements and any policies and procedures hereinafter adopted by DCH.

### **VI. Liability and Indemnification.**

**A. Liability.** You hereby expressly acknowledge and agree that you shall:

- i. Release and hold DCH harmless, for any harm of any kind (including any civil, criminal, administrative or regulatory investigation, determination, finding, holding, action, sanction or penalty by or on behalf of any judicial, administrative or local, state, or federal agency, department, division, office, or program, including, but not limited to, CMS, OCR or OIG) to any other party (including, but not limited to, DCH, or any Member, Member Affiliate, Vendor, Network Facilitator, Individual or any other third party) caused either directly or indirectly by your (i) acts or omissions relating to your access and use of Network; (ii) access, request, receipt, disclosure, re-disclosure, or transmission of Health Data or Proprietary Information by or through the Network; (iii) use of any password, identifier, or log-on received or obtained directly or indirectly, lawfully or unlawfully, from Vendor, Network Facilitator, DCH or any other Member or Member Affiliate; (iv) negligence relating, but not limited to, your use and access of the Network and access, request, receipt, disclosure, re-disclosure or transmission of Health Data or Proprietary Information by or through the Network; (v) violation of Applicable Laws; or (vi) breach of this Agreement or any other agreements, policies, procedures, guidelines, notices, manuals incorporated by reference herein (including, but not limited to, the Member Affiliate Agreement, any applicable provisions of the Member Agreement, the Network Operating Policies and Technical Requirements, and any policies and procedures adopted by DCH).
- ii. Not seek any indemnity, contribution or otherwise join DCH as a party to any action of any kind associated with or resulting from such harm.

iii. In accordance with and as more fully described in the Member Affiliate Agreement, severally indemnify DCH for any and all costs, fines, penalties and sanctions imposed on it in connection with any acts or omissions taken by, or directly or indirectly resulting from, your use and access of the Network.

iv. Release and hold DCH and Vendor harmless for any losses, liabilities, or costs incurred by you as a result of or in connection with the suspension or termination of the Member Affiliate Agreement which shall immediately terminate this Agreement.

**B. Indemnification.**

You shall severally and not jointly indemnify, release, and hold harmless DCH, Vendor, Network Facilitator and other Members and other Member Affiliates, and their respective affiliates, employees and agents for any damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising from your breach of this Agreement, including your unauthorized or improper use of the Network or your use or disclosure of Health Data for any purpose other than the Permitted Purposes.

**VII. Patient Consent and Notice of Privacy Practices.**

**A. Patient Consent.**

You are responsible for obtaining any consent or authorization(s) from the Individual or the Individual's authorized representative who is the subject of the Health Data **before** making such Health Data available for access or requesting such Health Data through the Network using the Clinical Viewer in accordance with Applicable Law.

**B. Notice of Privacy Practices.**

You are responsible for updating your Notice of Privacy Practices in accordance with the Network Operating Policies and Technical Requirements and shall make your Notice of Privacy Practices available to an Individual **before** sending, uploading, or otherwise distributing any of the Individual's Health Data through the Network.

**VIII. Amendment.**

This agreement may be amended by DCH in its sole discretion at any time. Any amendments to this Agreement shall be communicated by DCH to you via a notification provided via the Clinical Viewer/GAMMIS.

**IX. User's Consent and Signature.**

By checking the "Yes, User Agrees" box, you hereby agree that you (a) have read, understood, and have consented to the terms and conditions of this Agreement; and (b) are authorized to consent to the terms and conditions of this Agreement. You also agree that you (a) have read, understood, and consented to the terms and conditions of each of the following agreements, contracts, policies, procedures, and guidelines incorporated by reference herein or therein, as each may be amended from time to time, by checking the "Yes, User Agrees" box located in each agreement, policy, procedure or guideline; and (b) are authorized to consent to the terms and conditions of each of the following agreements, contracts, policies, procedures, and guidelines incorporated by reference herein or therein:

- **The Member Affiliate Agreement.**

- **The Member Agreement.**
- **The Subscription Agreement.**
- **The Business Associate Agreement between you and Vendor**
- **The Network Operating Policies and Technical Requirements.**
- **DCH Policy #001 titled “Medicaid Providers Use of the Georgia Health Information Network (GaHIN”) Clinical Viewer.”**