

**PARTNERS HEALTHCARE SYSTEM, INC.  
PHYSICIAN GATEWAY USER AGREEMENT**

**BACKGROUND**

Physician Gateway is a physician portal which offers licensed healthcare providers and their sponsored office staff who are registered to use the portal limited view-only access to certain clinical data from Partners Healthcare System, Inc. and/or its affiliates (collectively, "Partners"). To obtain access to Physician Gateway you must agree to be bound by all of the terms of this User Agreement. By clicking the "I Agree" button below, you are indicating that you agree to be bound by all of the terms in this Agreement. Please print and retain a copy of this Agreement. Partners may, from time to time, change the terms of this Agreement. When the terms are changed, Partners will notify you via e-mail at the e-mail address provided above. Your continued use of Physician Gateway after such changes become effective constitutes acceptance of the new terms. If you do not agree to such changed terms, or if at any time you no longer wish to otherwise abide by this Agreement, you should not access or use Physician Gateway. The most current version of this Agreement can be accessed at any time by selecting the "Physician Gateway Terms & Conditions" link.

**PHYSICIAN GATEWAY ACCESS**

Subject to the terms contained herein, Partners hereby grants you a limited license to access Physician Gateway. You agree that you shall use Physician Gateway only in accordance with the terms of this Agreement, applicable law, and the rules, policies and procedures established by Partners for use of Physician Gateway. This license may not be shared with or transferred or sublicensed to any other party, including with or to other clinicians or staff members in your office. This license expressly excludes, without limitation, any rights to use Physician Gateway or the data contained therein for reproduction, duplication, sale, resale or other commercial purposes, or for any data extraction or data mining purposes, to make any derivatives of Physician Gateway or the data contained therein, or to collect or use other user information, including, without limitation, health information. This license is limited to your use only and you may access the portal from your office or home PC(s) only. You specifically agree not to access Physician Gateway from any other access point, including without limitation, hand held devices, unprotected PDAs and laptops, and public internet kiosks, or in any unprotected environments, such as airports and public libraries. You agree that you are using and will continue to use appropriate PC safeguards such as personal firewalls, Adware/Spyware protection, and up-to-date virus protection and access control (consisting of at least a user id and password) on your PCs designed to protect the confidentiality, integrity and availability of the data accessible through Physician Gateway. You represent and warrant that all information provided to Partners in connection with this Agreement, including in the process of registration for Physician Gateway, is true, accurate and complete. You are responsible for installing and maintaining all equipment and systems necessary to access Physician Gateway and for paying all charges related thereto.

**SECURITY AND PASSWORDS**

Access to Physician Gateway is enabled only by usernames and passwords. You will choose your username and password when registering for access. In addition, you will be required to change your password every ninety (90) days thereafter. You shall maintain your username and password in strict confidence. In no event shall you share your username or password with any third party or allow another person, including another clinician or staff member in your office, to access Physician Gateway using your username and password. You shall immediately notify Partners if you have any reason to believe that your username or password has been lost or compromised or misused in any way. You are fully and solely responsible for any and all use of Physician Gateway under your

username and password. Partners reserves the right to revoke or deactivate your username and password at any time.

#### **FOR USE FOR TREATMENT PURPOSES ONLY**

You are hereby permitted use of Physician Gateway only for Treatment, as such term is defined in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164 (the "Privacy Rule"), of patients currently under your care.

You are strictly prohibited from accessing or using Physician Gateway for any purpose other than for Treatment of patients currently under your care. You shall promptly notify Partners in the event that any of your patients ceases to be under your care or requests that you no longer receive access to such patient's information via Physician Gateway. You shall not in any circumstances access, use or disclose Protected Health Information (as defined in the Privacy Rule) of any patient other than those patients currently under your care and to whose records you have been given access by Partners. You acknowledge and agree that your use of Physician Gateway is subject to audit at any time and without further notice to you.

#### **USER REPRESENTATIONS AND WARRANTIES**

You represent and warrant, and covenant that during the term of this Agreement: (i) you are, and shall remain, duly licensed and registered, and in good standing under the laws of the state in which you practice, to engage in the practice of medicine, and that said license and registration have not been suspended, revoked or restricted in any manner; (ii) you shall at all times render services to patients in a competent, professional and ethical manner, in accordance with prevailing standards of medical practice, and material compliance with all applicable statutes, regulations rules, orders and directives of any all applicable governmental and regulatory bodies having competent jurisdiction; (iii) you have not been suspended or excluded from participating in Medicare, Medicaid, other federal and state reimbursement programs; and (iv) you are not, and have not been, the subject of any federal or state governmental investigation or the subject of a corporate integrity agreement.

#### **NON-DISCLOSURE AND CONFIDENTIALITY**

In using Physician Gateway, you will have access to confidential information of Partners and third parties ("Confidential Information") that may include (i) software, codes, technology, logic, techniques, formats, tools, designs, concepts, methods, processes, ideas, functional specifications, technical materials and information, and related documentation; and (ii) individually identifiable health information and other personal information contained in the medical record as accessed through Physician Gateway.

During the term of this Agreement and thereafter, you agree not to disclose any Confidential Information to any third party except as permitted by this Agreement and by applicable law.

You agree to maintain and safeguard vigilantly the privacy and security of all Confidential Information. You shall implement and maintain appropriate administrative, physical, technical, and procedural safeguards to protect the confidentiality, integrity, and availability of electronic information, to protect against reasonably anticipated threats or hazards, and to prevent use or disclosure of Protected Health Information accessed through Physician Gateway other than as permitted by this Agreement or required by law. Such safeguards shall comply with all applicable federal, state, and local requirements including those set forth under the Health Insurance Portability and Accountability Act of 1996, and the rules and regulations promulgated thereunder, as amended from time to time ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act of 2009, and the rules and regulations promulgated thereunder, as amended from time to time ("HITECH"), and with security measures

and controls that may be required from time to time by Partners. You further agree to comply with the Standards for the Protection of Personal Information of Residents of the Commonwealth set forth under 201 C.M.R. 17 (“MA Data Security Standards”) with respect to Personal Information, as such term is defined in the MA Data Security Standards.

Without limiting the foregoing, you agree to undertake all reasonable measures to ensure the privacy and security of all Confidential Information including without limitation: (i) to use Physician Gateway and the Confidential Information only as needed to perform your responsibilities as a treating healthcare provider; (ii) not to access or use any Confidential Information that you have no legitimate authorization to access or use; (iii) not to access Physician Gateway or any Confidential Information for any other individual or any unauthorized third party; (iv) to restrict physical and system access to the equipment which contains Confidential Information or which gives Physician Gateway access (such as by diligently locking and monitoring office premises and requiring password verification to gain access to desktop computers); and (v) implementing procedures to ensure no computer or terminal with live access to Physician Gateway is left unattended at any time.

You immediately shall notify (via telephone call to the Partners Compliance Hotline at 1-800-856-1983), and cooperate fully with Partners in the event you discover or suspect: (a) any unauthorized use of or access to Physician Gateway; (b) any inappropriate use or disclosure of information contained in Physician Gateway or obtained through use of Physician Gateway; (c) the recognition or introduction of any virus or any malicious or destructive programs; (d) any Security Incident (as defined in the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR parts 160, 162 and 164) or (e) any Breach of Unsecured PHI (as defined in Subtitle D of HITECH at 42 U.S.C. §17921). In the event that a Security Incident or other breach occurs, you shall take affirmative steps to notify all affected parties of the breach, to cure the breach and prevent future breaches, and to mitigate the effects of the breach. All Breaches of Unsecured PHI shall be reported in accordance with the standards set forth under HITECH at 45 CFR 164.400, et seq. If in the opinion of Partners, a breach has affected or may affect any other Physician Gateway user or any individual whose Protected Health Information is contained on the Physician Gateway, then Partners, in its discretion, may notify such Physician Gateway user or individual of the breach or may require you to immediately notify such Physician Gateway user or individual of the breach.

## **SPONSORED ACCESS**

If You are a licensed provider, you may request Physician Gateway access for certain members of your office staff who require such access in order for You to provide Treatment to patients currently under your care. By making a request for access by a member of your office staff: (i) You acknowledge and agree that You are sponsoring the access for such staff and will ensure that each member of the staff complies with all terms and conditions of this Agreement; and (ii) You represent and warrant to Partners that such office staff member requires access to Physician Gateway in order for You to provide Treatment to patients currently under your care. You will notify Partners in advance of your termination of the employment (or other similar work relationship) of any office staff member with sponsored access to Physician Gateway and notify Partners immediately upon the resignation of any office staff member so that Partners may terminate Physician Gateway access for such individual.

If You are a licensed physician, you may also request temporary sponsored access for another physician who is also an authorized user of Physician Gateway in order to provide Treatment to patients currently under your care during certain temporary situations where you are unavailable (such as vacations and temporary leaves of absence).

All requests for sponsored access remain subject to the written approval of such request by Partners in its sole and absolute discretion, registration of such sponsored user with Physician Gateway, and acceptance of the terms

of this Agreement by such user. You acknowledge and agree that You are and shall remain responsible for the actions of any of your sponsored users.

## **COMPLIANCE WITH LAWS**

You shall comply in all material respects with all Federal, state and local laws, rules and regulations and JCAHO accreditation standards, including, without limitation, the standards for privacy of individually identifiable health information under HIPAA and HITECH and the standards for the protection of Personal Information under the MA Data Security Standards.

## **INSURANCE**

Providers shall obtain and maintain during the term of this Agreement such policies of general liability, errors and omissions, and professional liability insurance with reputable insurance companies as is carried in the usual course by similar businesses. Such insurance shall be in amounts no less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate. Providers shall provide to Partners upon request copies of the applicable policies, certificates or other evidence of such coverage. In addition, you shall provide Partners with thirty (30) days' written notice prior to any cancellation or adverse material change in such insurance.

## **TERM; TERMINATION**

Partners may terminate this Agreement and access to the Physician Gateway at any time and for any reason. Upon termination, all licenses and access granted hereunder shall terminate and you shall cease use of Physician Gateway.

You or Partners may suspend or terminate your access to Physician Gateway at any time, for any reason or for no reason at all. Partners has the right to refuse to provide access to Physician Gateway to any person, agency or organization, or to prohibit any person, agency or organization from using Physician Gateway, at any time, for any reason or for no reason at all, in its sole discretion. Partners reserves the right to change, suspend, or discontinue all or part of Physician Gateway, temporarily or permanently, without prior notice. We reserve the right to delete or change any username or password at any time, for any reason or for no reason at all.

You acknowledge and agree that all obligations relating to Confidential Information under this Agreement will continue after termination of this Agreement and termination of access rights hereunder.

You shall immediately notify Partners (via phone using the HIS phone numbers, which are listed on the registration forms at the top left on the Physician Gateway Login Page) at such time as you cease to be associated with the medical practice indicated on the first page of this Agreement.

## **VIOLATION OF THIS AGREEMENT**

You acknowledge that you shall be subject to discipline or other adverse action (which may include, without limitation, termination of this Agreement, suspension or termination of Physician Gateway access, or termination of staff privileges or appointment at any Partners-affiliated institution, or reporting to any applicable licensing board) if you violate any provision of this Agreement. You acknowledge and agree that a violation of this Agreement by you will result in irreparable injury that will entitle Partners to obtain a court order prohibiting you from using Physician Gateway or any Confidential Information.

## **COPYRIGHT AND PROPRIETARY RIGHTS**

You acknowledge and agree that Physician Gateway and the Confidential Information is the property of Partners or its licensors, and are protected by United States and international copyright law, trademark law, and trade secret law, as well as other state, federal and international laws and regulations. Except as expressly provided in this Agreement, Partners does not grant any rights to you under any patents, copyrights, trademarks or trade secret information. Accordingly, unauthorized use of Physician Gateway or the Confidential Information may violate patent laws, copyright laws, trademark laws, trade secret laws, laws pertaining to privacy and publicity rights or other laws or regulations. The copying, redistribution, use or publication by you of any part of Physician Gateway or the Confidential Information is strictly prohibited.

Partners shall have the right to use and incorporate into Physician Gateway any feedback and input provided by you, for any purpose, including the improvement of Physician Gateway and other research, educational and patient care purposes.

## **DISCLAIMERS**

**ACCESS TO PHYSICIAN GATEWAY AND THE INFORMATION CONTAINED THEREIN IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, PARTNERS DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.**

**PARTNERS DOES NOT CONTROL THE DEVICES OR COMPUTERS OR THE INTERNET OVER WHICH YOU MAY CHOOSE TO ENTER CONFIDENTIAL OR PERSONAL INFORMATION AND CANNOT, THEREFORE, PREVENT INTERCEPTIONS OR COMPROMISES TO YOUR INFORMATION WHILE IN TRANSIT TO PARTNERS. PARTNERS MAKES NO GUARANTEE AS TO THE SECURITY, INTEGRITY, OR CONFIDENTIALITY OF ANY INFORMATION TRANSMITTED TO OR FROM PHYSICIAN GATEWAY.**

**WITHOUT LIMITING THE FOREGOING, PARTNERS DOES NOT WARRANT THAT ACCESS TO PHYSICIAN GATEWAY WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS, IF ANY, WILL BE CORRECTED; NOR DOES PARTNERS MAKE ANY REPRESENTATIONS ABOUT THE ACCURACY, RELIABILITY, CURRENCY, QUALITY, COMPLETENESS, USEFULNESS, PERFORMANCE, SECURITY, LEGALITY OR SUITABILITY OF PHYSICIAN GATEWAY OR ANY OF THE INFORMATION CONTAINED THEREIN. FURTHERMORE, CERTAIN TYPES OF PATIENT INFORMATION ARE NOT AND WILL NOT BE AVAILABLE VIA PHYSICIAN GATEWAY. YOU EXPRESSLY AGREE THAT YOUR USE OF PHYSICIAN GATEWAY AND YOUR RELIANCE UPON ANY OF ITS CONTENTS IS AT YOUR SOLE RISK.**

**YOU SHALL BE SOLELY AND FULLY RESPONSIBLE FOR ANY DAMAGE TO THE PHYSICIAN GATEWAY SYSTEM OR ANY COMPUTER SYSTEM, ANY LOSS OF DATA, OR ANY IMPROPER USE OR DISCLOSURE OF INFORMATION ON PHYSICIAN GATEWAY CAUSED BY YOU OR ANY PERSON USING YOUR USERNAME OR PASSWORD. PARTNERS AND PARTNERS AFFILIATES CANNOT AND DO NOT ASSUME ANY RESPONSIBILITY FOR YOUR MISUSE OF ANY OF PROTECTED HEALTH INFORMATION, IDEAS, INFORMATION, INSTRUCTIONS OR GUIDELINES ACCESSED THROUGH PHYSICIAN GATEWAY.**

**ACCESS TO PHYSICIAN GATEWAY AND THE INFORMATION CONTAINED THEREIN IS NOT A SUBSTITUTE FOR PROFESSIONAL JUDGMENT OF HEALTH CARE PROFESSIONALS IN DIAGNOSING AND TREATING PATIENTS. PARTNERS AND ITS AFFILIATES DO NOT ASSUME ANY LIABILITY OR RESPONSIBILITY FOR DAMAGE OR INJURY (INCLUDING DEATH) TO PROVIDER OR OTHER PERSONS OR PROPERTY ARISING FROM ANY USE OF OR RELIANCE UPON ANY INFORMATION, IDEA, OR INSTRUCTION ACCESED BY YOU THROUGH PHYSICIAN GATEWAY.**

## **LIMITATIONS OF LIABILITY**

**IN THE EVENT OF ANY PROBLEM WITH PHYSICIAN GATEWAY OR ANY OF ITS CONTENT, YOU AGREE THAT YOUR SOLE REMEDY IS TO CEASE USING PHYSICIAN GATEWAY. UNDER NO CIRCUMSTANCES SHALL PARTNERS OR ANY PARTNERS AFFILIATE BE LIABLE IN ANY WAY FOR YOUR USE OF PHYSICIAN GATEWAY OR ANY OF ITS CONTENT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, ANY INFRINGEMENT BY ANY CONTENT OF THE INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS OF THIRD PARTIES, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT.**

**UNDER NO CIRCUMSTANCES SHALL PARTNERS OR ANY PARTNERS AFFILIATE BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR OTHER DATA ON YOUR INFORMATION HANDLING SYSTEM OR OTHERWISE) ARISING FROM OR IN CONNECTION WITH YOUR USE OF PHYSICIAN GATEWAY, WHETHER UNDER A THEORY OF BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF WE OR THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**YOU HEREBY RELEASE AND AGREE TO HOLD PARTNERS AND PARTNERS AFFILIATES HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, AND DAMAGES OF EVERY KIND AND NATURE (INCLUDING, WITHOUT LIMITATION, ACTUAL, SPECIAL, INCIDENTAL AND CONSEQUENTIAL), KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR USE OF PHYSICIAN GATEWAY. YOU WAIVE THE PROVISIONS OF ANY STATE OR LOCAL LAW LIMITING OR PROHIBITING A GENERAL RELEASE.**

## **INDEMNIFICATION**

Without limiting the generality or effect of other provisions of this Agreement, as a condition of use, you agree to indemnify, hold harmless, and defend Partners and its parents, subsidiaries, affiliates, suppliers and their officers, directors, affiliates, subcontractors, agents and employees (collectively, "Indemnified Parties" and each, individually, an "Indemnified Party") against all costs, expenses, liabilities and damages (including reasonable attorney's fees) incurred by any Indemnified Party in connection with any third party claims arising out of: (i) your use of Physician Gateway; (ii) your failure to comply with any applicable laws and regulations; and (iii) your breach of any of its obligations set forth in this Agreement. You shall not settle any such claim without the written consent of the applicable Indemnified Party.

## **MISCELLANEOUS**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to its rules on conflicts or choice of law. You hereby consent to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts for the resolution of any dispute based upon or relating to this Agreement. This Agreement constitutes the sole agreement between you and Partners relating to your use and our provision of Physician Gateway and the subject matter hereof, and no representations, statements or inducements, oral or written, not contained in this Agreement shall bind either you or Partners. Any of the terms of this Agreement which are determined to be invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable any of the remaining terms of this Agreement or affecting the validity or enforceability of the Agreement as a whole. Failure to insist on performance of any of the terms of the Agreement will not operate as a waiver of any subsequent default. No waiver by Partners of any right under this Agreement will be deemed to be either a waiver of any other right or provision or a waiver of that same right or provision at any other time. You may not assign, transfer or delegate your rights or obligations hereunder, in

whole or in part. This Agreement shall be binding upon and inure to the benefit of each of the parties and the parties' respective successors and permitted assigns. You shall inform Partners immediately in the event of a change in ownership or name of the medical practice indicated on the first page of this Agreement. Except as otherwise specifically provided herein, this Agreement may not be modified, supplemented, qualified, or interpreted except in a writing signed by the parties.

A printed version of this Agreement and of any related notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.