CARELON BEHAVIORAL HEALTH, INC.
AND

DATA USE AGREEMENT

AGREEMENT FOR DISCLOSURE AND USE OF CHILDREN AND YOUTH BEHAVIORAL HEALTH INITIATIVE DATA AND DOCUMENTS CONTAINING INDIVIDUAL AND PROVIDER-SPECIFIC INFORMATION

In order to exchange data and documents related to the Children and Youth Behavioral Health Initiative (hereinafter "CYBHI") statewide, multi-payer fee schedule, and to ensure the integrity, security, and confidentiality of such data and documents, and to permit only appropriate disclosure and use as may be permitted by law, and _____ and/or its contractor on its behalf, _____ ("Contractor")(hereinafter, individually and collectively as the context may require, referred to as "LEA") and Carelon Behavioral Health, Inc. (hereinafter "Carelon") enter into this Data Use Agreement (hereinafter "Agreement") to comply with the following specific sections. This Agreement shall be binding on any successors to the parties (Carelon and LEA).

1. The Department of Health Care Services (hereinafter "DHCS") requires that its business associate, Carelon, must enter into a data use agreement with all participating LEAs and IHEs. This Agreement is by and between Carelon and LEA.

2. This Agreement addresses the conditions under which the parties will disclose, obtain and use CYBHI data file(s) as set out in Attachment A. This Agreement supplements any agreements between the parties with respect to the use of information from data and documents and overrides any contrary instructions, directions, agreements, or other understandings in or pertaining to any other prior communication from DHCS or any of its components with respect to the data specified in this Agreement. The terms of this Agreement may be changed only by a written modification to this Agreement or by the parties entering into a new agreement. The parties agree further those instructions or interpretations concerning this Agreement, and the data and documents specified herein, shall not be valid unless issued in writing by the applicable point of contact specified in Section 3.

3. The parties mutually agree that the following named individuals will be designated as "point- of- contact" for the Agreement:

LEA Contact Name and Title	LEA Contact Phone Number
LEA Contact Email Address	LEA Contact Mailing Address
Contractor Name and Title	Contractor Contact Phone Number
Contractor Contact Email Address	Contractor Contact Mailing Address
Molly Roha-Fuentes, Director, Network Management	CYBHITPA@Carelon.com
Carelon Contact Name and Title	Carelon Contact Information

4. The parties mutually agree that the following specified Attachments are part of this Agreement:

   a. Attachment A: Data Files

5. The parties mutually agree, and in furnishing CYBHI data files hereunder each party relies upon such agreement, that such data file(s) will be used solely for the following purposes of exchanging data with each other as directed by DHCS in each party's respective agreements with DHCS. The parties have determined that the CYBHI data files listed in Attachment A is the minimum amount needed for these purposes.

6. Some of the data specified in this Agreement may constitute Protected Health Information (PHI), including protected health information in electronic media (ePHI), under federal law, and Personal Information (PI) under state law. The parties mutually agree that the creation, receipt, maintenance, transmittal and disclosure of CYBHI data containing PHI or PI shall be subject to the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act) and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 (HIPAA regulations), the Final Omnibus Rule, the provisions of the California Information Practices Act, Civil Code section 1798 *et. seq.*, if applicable 42 CFR Part 2, and the provisions of other applicable federal and state law and to the extent applicable, Family Educational Rights and Privacy Act (FERPA). The parties specifically agree they will not use the Attachment A data for any purpose other than that stated in paragraph 5 of this Agreement. Both parties also specifically agree they will not use the other party's data, by itself or in combination with any other data from any source, whether publicly available or not, to individually identify any person to anyone other than for the purposes as provided in this Agreement.

7. The following definitions shall apply to this Agreement. The terms used in this Agreement, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations or other applicable law. Any reference to statutory or regulatory language shall be to such language as in effect or as amended:

   a. "Breach" shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, the Final Omnibus Rule, and the California Information Practices Act.

   b. "Individually Identifiable Health Information" means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future

   physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.

   c. "Personal Information" (PI) shall have the meaning given to such term in Civil Code section 1798.29.

   d. "Protected Health Information" (PHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.

   e. "Required by law, as set forth under 45 CFR section 164.103," means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court- ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

   f. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the User's organization and intended for internal use; or interference with system operations in an information system.

   g. "Unsecured PHI" shall have the meaning given to such term under the HITECH Act, any guidance issued pursuant to such Act including, but not limited to, 42 USC section 17932(h), the HIPAA regulations and the Final Omnibus Rule.

8. Each party represents and warrants that, except as the other party shall authorize in writing, receiving party shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement to any person, company or organization. Each party agrees that access to the data covered by this Agreement shall be limited to the minimum number of individuals necessary to achieve the purposes stated in this Agreement, or Attachment A, and to those individuals on a need-to-know basis only. Neither party shall use or further disclose the information other than is permitted by this Agreement or as otherwise required by law. Carelon shall not use the information to identify or contact any individuals other than is required for purposes of carrying out its obligations under the Agreement and/or its obligations to DHCS.

9. The parties agree to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the CYBHI data and to prevent unauthorized use or access to it. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established in HIPAA, the HITECH Act, and the Final Omnibus Rule as set forth in 45 CFR, parts 160, 162 and 164 of the HIPAA Privacy and Security Regulations. The parties also agree to ensure that any agents, including a subcontractor, to whom they provide CYBHI data, agree to the same requirements for privacy and security safeguards for confidential data that apply to the parties with respect to such information.

10. Both parties acknowledge that in addition to the requirements of this Agreement, they must also abide by the privacy and disclosure laws and regulations under 45 CFR Parts 160 and 164 of the HIPAA regulations, section 14100.2 of the California Welfare & Institutions Code, Civil Code section 1798.3 et. seq. and the Alcohol and Drug Abuse patient records confidentiality law, if applicable 42 CFR Part 2, as well as any other applicable state or federal law or regulation. 42 CFR section 2.1(b)(2)(B) allows for the disclosure of such records to qualified personnel for the purpose of conducting management or financial audits, or program evaluation. 42 CFR Section 2.53(d) provides that patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by an appropriate court order. Each party also agrees to ensure that any agents, including a subcontractor, to whom they provide the other party's data, agrees to the same restrictions and conditions that apply to the receiving party with respect to such information.

11. Each party agrees to report to the other party any use or disclosure of the information not provided for by this Agreement of which it becomes aware, immediately upon discovery. Such reports shall include a description of the use or disclosure including what information was compromised, how it was compromised, when the use or disclosure occurred, how it was discovered, what steps receiving party has taken to mitigate harm, and what steps disclosing party has taken to prevent similar incidents in the future, plus any additional information requested by receiving party. Disclosing party shall provide such cooperation as receiving party may reasonably request in connection with investigating and responding to any CYBHI data disclosure issue.

12. Each party agrees to train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities under this Agreement and use or disclose CYBHI data, and to discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment. In complying with the provisions of this section, each party shall observe the following requirements.

   a. Each party shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities under this Agreement and use or disclose CYBHI data; and

   b. Each party shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.

13. From time to time, the disclosing party may, upon prior written notice and at mutually convenient times, inspect the facilities, systems, books, and records of the receiving party to monitor compliance with this Agreement. Receiving party shall promptly remedy any violation of any provision of this Agreement and shall certify the same to the disclosing party in writing. When LEA is the receiving party, certification shall be made to Carelon's Privacy Officer. The fact that the disclosing party inspects, or fails to inspect, or has the right to inspect, receiving party's facilities, systems and procedures does not relieve receiving party of their responsibility to comply with this Agreement.

14. Each party acknowledges that penalties under 45 CFR, parts 160, 162 and 164 of the HIPAA regulations, and section 14100.2 of the California Welfare & Institutions Code, including possible fines and imprisonment, may apply with respect to any disclosure of information in the file(s) that is inconsistent with the terms of this Agreement. Each party further acknowledges that criminal penalties under the Confidentiality of Medical Information Act (Civ. Code § 56) may apply if it is determined that the receiving party, or any individual employed or affiliated therewith, knowingly and willfully obtained any data under false pretenses.

15. By signing this Agreement, the parties agree to abide by all provisions set out in this Agreement and for protection of the CYBHI data file(s) specified in this Agreement and in Attachment A, and acknowledge having received notice of potential criminal, administrative, or civil penalties for violation of the terms of the Agreement. Further, each party agrees that any material violations of the terms of this Agreement or any of the laws and regulations governing the use of CYBHI data may result in denial of access to CYBHI data.

16. This Agreement shall terminate at the time of the completion of the CYBHI or when terminated by one of the parties, and at that time all CYBHI data provided by the disclosing party must be destroyed by the receiving party and an affidavit of destruction sent to the disclosing party's representative named in Section 4, unless data has been destroyed prior to the termination date and an affidavit of destruction sent to disclosing party. All representations, warranties and certifications shall survive termination. Notwithstanding the above, CYBHI data may be retained by the receiving party in the following circumstances:

    a. As required by applicable local, state, federal, or international law, regulation, or policy that necessitates retention of certain CYBHI data for a specified period.

    b. In accordance with a litigation hold, in the event of actual or probable litigation.

    c. In observance of audit requirements that mandate CYBHI data availability for specified periods post-transaction.

    d. For archival purposes if deemed necessary for the continuance of the receiving party's business operations.

    e. As part of the receiving party's backup and disaster recovery procedures.

    f. To fulfill any obligations that are explicitly stated in this Agreement that require the retention of specific CYBHI data beyond the termination of the Agreement.

    g. To comply with any request by the disclosing party to the receiving party to retain specific CYBHI data for a particular period.

17. <u>Termination for Cause</u>. Upon a party's knowledge of a material breach or violation of this Agreement by the other party, the party may provide an opportunity for the other party to cure the breach or end the violation and may terminate this Agreement if the other party does not cure the breach or end the violation within the time specified by the non-breaching party. Non-breaching party may terminate this Agreement immediately if the other party breaches a material term and the non-breaching party determines, in its sole discretion, that cure is not possible or available under the circumstances. Upon termination of this Agreement, breaching party must destroy all PHI and PI in accordance with Section 16, above. The provisions of this Agreement governing the privacy and security of the PHI and PI shall remain in effect until all PHI and PI is destroyed or returned to the disclosing party.

18. This Agreement may be signed in counterpart and all parts taken together shall constitute one agreement. The Agreement is effective upon signature by both parties (Carelon and LEA).

19. Agreement Signatures.

    a. On behalf of LEA, the undersigned individual hereby attests that they are authorized to enter into this Agreement and agrees to all the terms specified herein.

_____
Signature of LEA/Company/Organization Authorized Representative

_____
Printed Name of Authorized Representative

_____
Title of Authorized Representative

_____
Date

_____
LEA/Company/Organization Name

_____
LEA NPI Number   LEA Tax Identification Number

_____
LEA/Company/Organization Phone Number and Email Address

_____
LEA/Company/Organization Address

_____
LEA/Company/Organization City/State/ZIP

    b. On behalf of Contractor, the undersigned individual hereby attests that they are authorized to enter into this Agreement and agrees to all the terms specified herein for the sole purpose of performing services under this Agreement on behalf of the LEA listed in 19.a.

_____
Signature of Contractor Authorized Representative

_____
Printed Name of Contractor Representative

_____
Title of Contractor Representative

_____
Date

20. On behalf of Carelon the undersigned individual hereby attests that they are authorized to enter into this Agreement and agrees to all the terms specified herein.

_____
Name of Carelon Representative

_____
Carelon Representative Title

_____
Carelon Representative Signature

_____
Date

Data Use Agreement - Attachment A

CYBHI data files to be exchanged between the parties:

CYBHI Fee Schedule Data	Disclosing Party	Receiving Party	Transmit Method
Provider/Practitioner Roster (SPI) Data	LEA/IHE/Contractor	Carelon	Secure File Transfer Protocol (Carelon Provider Connect or other SFTP)
Member Batch Registration Data	LEA/IHE/Contractor	Carelon	Secure File Transfer Protocol (Carelon Provider Connect or other SFTP)
SPI Response Files	Carelon	LEA/IHE/Contractor	Secure File Transfer Protocol (Carelon Provider Connect or other SFTP)
Claims (837 via Availity)	LEA/IHE/Contractor	Carelon	Availity/Clearinghouse (may vary)
Claims Remediation Files (999/277CA)	Carelon	LEA/IHE/Contractor	Availity/Clearinghouse (may vary)
Claims Payments (835 Files)	Carelon	LEA/IHE/Contractor	Automated Clearing House (ACH) Vendor (may vary)