

CONFIDENTIALITY AND DATA USE AGREEMENT

This Confidentiality and Data Use Agreement ("Agreement") is entered into as of and is in effect as of date of execution ("Effective Date") by and between Kaiser Foundation Health Plan, Inc., a California nonprofit public benefit corporation, ("Plan") and San Bernardino County Department of Public Health ("Local Health Department"). Plan and Local Health Department may be jointly referred to as "the Parties."

WHEREAS, Plan is a managed care health plan in the state of California that provides Medi-Cal managed care services to members enrolled with Plan through its contract with the State of California Department of Health Care Services ("DHCS");

WHEREAS, the Local Health Department conducts a community health assessment to identify priority needs of their local community and to identify health disparities;

WHEREAS, Plan has been instructed by DHCS on behalf of Medi-Cal enrollees to provide certain KP data, and Local Health Department to receive such data, but only for the purposes of supporting the Local Health Department's community health assessment to identify priority needs of their local community and identify health disparities (the "Purpose");

NOW, THEREFORE in consideration of the foregoing, the Parties hereby agree as follows:

1. Purpose and Scope. In furtherance of the Purpose, the Parties acknowledge and agree that this Agreement contemplates a one-way transfer of Plan's confidential and proprietary information that is not generally available to the public, including de-identified data created from member Protected Health Information ("PHI") ("Confidential Information").

2. Provision of Data by Plan. The Parties agree that the Confidential Information will be deidentified.

3. General Use and Disclosure of Confidential Information. Plan grants Local Health Department use of Confidential Information solely for the Purpose set forth in this Agreement. If Local Health Department shares Plan's Confidential Information with other health plans in order to effectuate the Purpose, it must pass through the restrictions in this Agreement to such other health plans and bind the other health plans in writing to these restrictions. Local Health Department is responsible for the use of Plan's Confidential Information by the other health plans that it shares such Plan Confidential Information with.

4. Local Health Department Obligations. Local Health Department understands and agrees that Plan's Confidential Information, whether written, oral, electronic or any other media or form, shall not be used or further disclosed for any purpose other than the Purpose under this Agreement or as otherwise required by applicable law. Local Health Department further agrees:

a. To use all appropriate safeguards to prevent use or disclosure of the Confidential Information other than as provided for by this Agreement;

b. Not to reproduce or otherwise duplicate or disseminate any Confidential



Information without prior written authorization from the other Party.

- c. Not to re-identify, or make any attempt to re-identify, the Confidential Information;
- d. To report promptly to Plan any use or disclosure of the Confidential Information not provided for by this Agreement of which Local Health Department becomes aware;
- e. To ensure that any employees, staff, or agents, to whom it provides the Confidential Information agree in writing to the same restrictions and conditions that apply to the Local Health Department with respect to the Confidential Information;
- f. To the extent disclosure of all or a portion of the Confidential Information is required by applicable law, rule or order of court, or government regulation, (i) to limit disclosure to required information, and (ii) to provide, to the extent such is not prohibited by law, rule, or order of court or governmental regulations, prompt written notice to Plan to permit Plan to take steps to avoid the need for such disclosure and/or to obtain a protective order; and
- g. To use or disclose to its employees, staff, subcontractors, agents or other third parties only the minimum necessary of the Confidential Information to effectuate the Purpose set forth in this Agreement.
- h. Under no circumstances shall a Local Health Department Party sell or commercialize Plan's Confidential Information.
- i. These obligations shall survive termination of this Agreement.

5. Destruction of Confidential Information. All Confidential Information (including all copies and portions thereof and including where combined with other information) will be destroyed by Local Health Department once the Confidential Information is no longer needed for the Purpose set forth in this Agreement, but no later than thirty (30) days after the expiration or termination of this Agreement. Local Health Department will provide written certification to Plan of destruction of all such Confidential Information and shall not retain any copies in any form.

6. Compliance with Laws. Plan and Local Health Department shall comply with all applicable laws and regulations including the HIPAA Privacy and Security Rules and to the extent applicable, the California Medical Information Act.

7. Term and Termination.

- a. **Term.** This Agreement shall be effective as of the Effective Date and shall remain in effect for one (1) year and automatically renew annually for three (3) more times unless terminated as provided herein.
- b. **Termination without cause.** Either Party may terminate this Agreement without cause upon thirty (30) days advance written notice.
- c. **Termination with cause.** Upon either Party's knowledge of a material breach by



another Party, the Party may either (i) provide an opportunity for the other Party to cure the breach or end the violation within 30 days; or (ii) immediately terminate this Agreement if the Party believes the breach cannot be cured.

8. Indemnification. Local Health Department shall indemnify, defend and hold harmless Plan, Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., and all other persons or organizations constituting or cooperating in the conduct of the Kaiser Permanente medical care program, and each of their respective officers, directors, partners, shareholders, agents and employees to the extent allowed by law, from and against any and all demands, claims, losses, damages, liability, costs, expenses (including the payment of attorneys' fees and costs actually incurred, whether or not litigation is commenced), judgments or obligations, actions or causes of action whatsoever, to the extent arising from or in connection with any acts, failures to act or the performance of or failure to perform obligations hereunder by Local Health Department, its officers, partners, employees, subcontractors or agents.

Plan shall indemnify, defend and hold harmless Local Health Department, and all other persons or organizations constituting or cooperating in the conduct of the Plan's medical care program, and each of their respective officers, directors, partners, shareholders, agents and employees to the extent allowed by law, from and against any and all demands, claims, losses, damages, liability, costs, expenses (including the payment of attorneys' fees and costs actually incurred, whether or not litigation is commenced), judgments or obligations, actions or causes of action whatsoever, to the extent arising from or in connection with any acts, failures to act or the performance of or failure to perform obligations hereunder by Plan, its officers, partners, employees, subcontractors or agents.

9. Remedies. The Parties acknowledge and agree that damages may not be an adequate remedy in the event of a breach of this Agreement. Without prejudice to the rights and remedies otherwise available to Disclosing Party, if there is a breach or threat of breach of any of the provisions of this Agreement by the Receiving Party, Disclosing Party shall be entitled to seek an immediate injunction and other equitable relief enjoining any breach or threatened breach without the necessity of posting any bond or other security. Receiving Party shall notify Disclosing Party in writing immediately upon Receiving Party's becoming aware of any such breach or threatened breach.

10. Notice. All notices and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand; (b) when received, if sent by a nationally recognized overnight courier (with written confirmation of receipt); (c) on the date sent by facsimile or e-mail of a PDF document (with written confirmation of transmission), if sent during normal business hours, and on the next business day, if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, confirmation of delivery or return receipt requested, postage prepaid. Such communications shall be sent to the addresses provided below (or such other address designated by a Party in compliance with this Section).

If to Plan: Kaiser Foundation Health Plan, Inc.

NAME/TITLE: Claire Horton, MD, MPH, Vice President, Associate Chief Medical Officer, National Medicaid and State Programs

ADDRESS: One Kaiser Plaza, Oakland, CA 94612

E-MAIL: claire.x.horton@kp.org

If to Local Health Department: San Bernardino County Department of Public Health

NAME/TITLE: Ken Johnston, Division Chief

ADDRESS: 451 E. Vanderbilt Way, 4th Floor, San Bernardino CA 92415-0012

E-MAIL: Ken.Johnston@dph.sbcounty.gov

11. Miscellaneous. Neither Party may assign this Agreement without the other Party's written consent, and this Agreement will be binding on any successor-in-interest of a Party. No waiver or modification of this Agreement will be binding unless made in writing and signed by the Parties, and no failure or delay in enforcing any right will be deemed a waiver. If any provision or part of a provision of this Agreement is invalid, illegal or unenforceable, the remaining provisions will remain binding and enforceable. This Agreement does not supersede (i) any memorandum of understanding ("MOU") executed by the Parties for the Purpose, or (ii) any business associate agreement executed by the Parties for the Purpose ("BAA") with respect to PII or Health Information. In the event of a conflict between the terms of this Agreement and the MOU or BAA, the terms of the MOU or BAA will control.

12. Relationship of the Parties. Nothing in this Agreement is intended to create nor shall it be construed to create between the Parties a relationship of principal, agent, employee, partnership, joint venture or association. Neither Party has authorization to enter into any contracts, assume any obligations or make any warranties or representations on behalf of the other.

13. Subcontractors. Each Party shall require any of its subcontractors that acquire, access, disclose, or use Confidential Information to comply with the terms and conditions of this Agreement and indemnify the other Party to the same extent required by Section 9 above.

14. No Third-Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

15. Entire Agreement. This Agreement, which includes all attachments and all documents that are incorporated by reference, contains the entire agreement between the Parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by both Parties.

16. Attorney Fees. The Parties shall bear their own costs and attorneys' fees incurred in connection with this Agreement.

17. Enforcement of Agreement. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California without regard to its choice of laws rules. The federal or state courts located in the State of California shall have jurisdiction and venue to hear any dispute arising under or in connection with this agreement.

18. Counterparts. This Agreement may be executed in counterparts that, together, shall constitute this Agreement.

19. Authority. The individuals signing this Agreement for the Parties represent and warrant that they are authorized to sign this Agreement on behalf of the Parties and to bind the Parties to the performance of their obligations hereunder.

20. Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein.

(Signature page follows)



IN WITNESS WHEREOF, the Parties have caused this Confidentiality and Data Use Agreement to be executed by their respective duly authorized representatives.

Kaiser Foundation Health Plan, Inc.

Local Health Department

By: _____

By: _____

Name: Celia Williams

Name: Dawn Rowe

Title: Executive Director, Medicaid Care Delivery and Operations

Title: Chair, Board of Supervisors

Date:

Date: