



## CONFIDENTIALITY AND DATA USE AGREEMENT

This Confidentiality and Data Use Agreement ("Agreement") is entered into as of and is in effect as of 12/31/2025 ("Effective Date") by and between Kaiser Foundation Health Plan, Inc., a California nonprofit public benefit corporation, ("KP" or "Plan") and County of Sonoma ("County"). KP and County may be jointly referred to as "the Parties."

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

WHEREAS, County administers various programs to eligible individuals in Sonoma County who have enrolled in Medi-Cal;

WHEREAS, the Parties have entered into a series of memoranda of understanding (MOUs) as required by DHCS All Plan Letter (APL) 23-029 for the purposes of transition of care, coordination of care and services, coordination of benefits and other similar limited purposes for their shared members as directed by DHCS in APL 23-029 and the MOU templates associated with this APL (the "Purpose"); and

WHEREAS, the Parties desire to enter into this formal agreement to affirm the non-disclosure and confidentiality obligations related to the Parties' access to, use, and disclosure of the other Party's confidential and proprietary information, including, but not limited to, personally identifiable and PHI protected under state and federal privacy and security rules and regulations, including the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, implementing regulations on privacy and security found at 45 C.F.R. Parts 160 and 164, as the same may be amended from time to time, 42 C.F.R. Part 2, and the California Confidentiality of Medical Information Act (CMIA).

NOW, THEREFORE in consideration of the mutual promises and covenants set forth herein, the adequacy, sufficiency and receipt of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Purpose and Scope.** In furtherance of the Purpose, the Parties acknowledge and agree that each Party will have access to certain confidential and proprietary information of the other Party that is not generally available to the public ("Confidential Information"), including member health information or other Individually Identifiable Health Information as defined under 45 C.F.R. § 160.103 ("Member Confidential Information") and protected under HIPAA and the regulations promulgated thereunder and CMIA. Member Confidential Information may also include information protected from disclosure by 42 C.F.R. Part 2. A Party's Confidential Information includes the Member Confidential Information that it provides to the other Party. The Parties represent and warrant that each Party has a Business Associate Agreement ("BAA") with the DHCS, and that this Agreement is entered into to provide the necessary data details for the transition of care, coordination of care and services, coordination of benefits, and other similar limited purposes set forth in APL 23-029 and the associated MOU templates.

**2. General Use and Disclosure of Confidential Information.** Neither Party shall use or disclose Confidential Information of the other Party, directly or indirectly, for any reason other than in support of the Purpose. The Parties understand and agree to hold in strictest confidence and protect all Confidential Information, whether written, oral, electronic or any other media or form. The Parties agree not to disclose any Confidential Information to third parties outside the scope of the Purpose of this Agreement: (a) without the other Party's prior, written permission; or (b) unless required under law or regulation, whereupon the disclosing Party shall promptly notify the other Party of such requirement to disclose. Under no circumstances shall a Party disclose Confidential Information to the other Party's competitors or sell or commercialize the other Party's Confidential Information. The Parties further agree that they each will not disclose Confidential Information to anyone within their respective organizations other than their employees that require the information solely in support of the Purpose and shall inform all such personnel of their obligations under this Agreement. Other than in support of the Purpose, the Parties agree not reproduce, reidentify, or otherwise duplicate or disseminate any Confidential Information without prior written authorization from the other Party. The Parties, respectively, shall not reverse engineer, disassemble or decompile any formulas, prototypes, software or other tangible objects which embody any Confidential Information, if applicable. Each Party expressly understands and agrees that it shall be responsible for any violation of these provisions. These obligations shall survive termination of this Agreement.

**Use and Disclosure of Member Confidential Information.** The Parties shall disclose to each other the minimum necessary data to support the Purpose. All such data shall be exchanged consistent with the privacy and security protocols that the other Party provides and otherwise makes known to the other Party. Each Party agrees that it will not disclose Personal Health Information (as defined under HIPAA) or any other Member Confidential Information of the other Party's members internally except on a need-to-know basis and shall require its agents, employees, representatives, and contractors to comply with the obligations under this Agreement. The Parties shall refrain from disclosing such Member Confidential Information to any third Party outside of the scope of the Purpose of this Agreement and shall take good faith measures to maintain the confidentiality of Member Confidential Information. Each Party shall notify the other Party immediately in the event any activities of a Party and its employees that violate the privacy Regulations. These obligations shall survive termination of this Agreement.

**3. Compliance with Laws Governing Disclosure of Member Confidential Information.** The use or disclosure of Member Confidential Information qualifying as PHI shall be made in accordance with the HIPAA Privacy and Security Rules, CMIA, and all other applicable state and federal laws and regulations including 42 C.F.R. Part 2. Each Party is responsible for its own compliance obligations under the HIPAA Privacy and Security Rules and 42 C.F.R. Part 2. If the disclosure of Member Confidential Information would include information and records originating from a federally assisted drug abuse program subject to the additional privacy protections provided by 42 C.F.R. Part 2 that identifies a member as having or having had a substance use disorder, the Party making the disclosure will obtain the appropriate consent(s) required by 42 C.F.R. Part 2 from the member prior to making the disclosure.

**4. 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 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 subject to Section 5(d); or (ii) immediately terminate this Agreement if the Party believes the breach cannot be cured.

**d. Temporary termination of access to Confidential Information.** Each Party reserves the right to temporarily and immediately terminate another Party's access to Confidential Information at any time if the Party becomes aware that another Party has suffered a Breach as that term is defined by HIPAA or has violated any of the terms of this Agreement, including without limitation accessing any information that a Party would not otherwise be authorized to receive pursuant to this Agreement, improperly disclosing Confidential Information, or otherwise failing to abide by the appropriate policies and procedures outlined in this Agreement. Access will be restored once the Breach is cured and/or adequate assurances have been provided that the breaching Party has resumed compliance with the terms of this Agreement.

**e. Effect of termination.** Upon termination or expiration of this Agreement, the Parties acknowledge that return or destruction of Confidential Information may not be feasible. However, the Parties shall take reasonable measures to maintain the privacy, confidentiality, and security of Confidential Information until the Confidential Information can be returned or destroyed. The provisions of this section shall survive expiration or termination of this Agreement.

**5. Rights of Access and Inspection.** From time to time upon reasonable notice, or upon a reasonable determination by either Party that the other Party has breached this Agreement, the non-breaching Party may inspect the facilities, systems, books and records of the other Party to monitor compliance with this Agreement. The fact that a Party inspects, or fails to inspect, or has the right to inspect, the other Party's facilities, systems and procedures does not relieve such Party of its responsibility to comply with this Agreement, nor does the non-breaching Party's (1) failure to detect or (2) detection of, but failure to notify or require the other Party's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of the non-breaching Party's enforcement or termination rights under this Agreement.

**6. Return of Confidential Information and Materials.** Within thirty (30) days after the expiration or termination of this Agreement for any reason, the Parties shall, upon request, return the other Party's Confidential Information to each other or provide written certification to the other Party of destruction of all such Confidential Information and shall not retain any copies in any form. To the extent return or destruction of Confidential Information is not feasible, the non-compliant Party shall notify in writing the other Party of the reasons return or destruction is not feasible and, if the other Party agrees, may retain the other Party's Confidential Information subject to this section. Under any circumstances, the Parties shall extend any and all protections, limitations and restrictions contained in this Agreement to the other Party's use and/or disclosure of Confidential Information retained after the expiration or termination of this Agreement. The provisions of this section shall survive expiration or termination of this Agreement.

**7. Change in Law.** The parties agree that if there is a change in law that makes any provision of this Agreement inconsistent with current law or regulation, relating to the confidentiality



or privacy of personal information or medical records, or otherwise, that provision shall not be effective, and the parties agree to negotiate in good faith to amend this Agreement so that it remains consistent with the change in law.

**8. Indemnification.**

**a. County Indemnification.** County shall indemnify, defend with counsel approved by KP (in consultation with KP in-house counsel) and hold harmless KP, Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., and all other persons or organizations 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 County, its officers, partners, employees, Subcontractors or agents.

**b. KP Indemnification.** KP shall indemnify, defend with counsel approved by County, and hold harmless County, its officers, directors, partners, 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 KP, its officers, partners, employees, 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 KP: Kaiser Foundation Health Plan, Inc.  
NAME/TITLE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_



If to County: \_\_\_\_\_  
NAME/TITLE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

**11. Assignment; Binding on Successors.** Neither Party may assign this Agreement or its obligations under this Agreement. Subject to the foregoing, this Agreement shall be binding on any successor-in-interest of a Party.

**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. The federal or state courts located in the State of California shall have jurisdiction to hear any dispute under this agreement.

**18. Waiver.** No waiver by either Party of any specific default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder. No waiver shall be effective unless it is in writing and signed by the waiving Party.

**19. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Addendum will remain in full force and effect.

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

**21. 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.

*(Signature page follows)*

DRAFT



**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.**

**County of Sonoma**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT