

**KAISER PERMANENTE HEALTHCONNECT®  
AFFILIATE LINK ACCESS AGREEMENT**

This **Kaiser Permanente HealthConnect® Affiliate Link Access Agreement** (“License Agreement”), applies to those written agreements between a Kaiser Permanente entity and Licensee, including without limitation, the Kaiser Permanente Online-Affiliate Enrollment Agreement, which such agreement incorporates by reference this License Agreement, and any agreement under which Licensee has agreed to provide health care services to Members, including, without limitation, a Provider Services Agreement, a Health Care Services Agreement, or a National Supplier Agreement through a Participating Plan Agreement (“Contract”), unless the parties have agreed in writing to use other terms and conditions. This License Agreement sets forth the terms under which KFH and other Kaiser Permanente entities allow Licensee access to the Web Sites for the sole purpose of Licensee fulfilling its obligations under its Contract with Kaiser Permanente, and solely for the authorized Purpose. Please retain a copy of this License Agreement for your files.

### **Definitions**

“Health Care Operations” means any of the following activities of the Licensee, or a business associate of the Licensee, to the extent that the activities are related to covered functions:

(1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; patient safety activities (as defined in 42 CFR 3.20); population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment; and  
(2) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities.

“Intellectual Property” means any software, tools, methods of doing business, processes, ideas, designs, protocols, inventions, trade secrets, and other technology and intellectual property.

“Kaiser Permanente” or “KP” means the medical care program and integrated health care delivery organization doing business as Kaiser Permanente including, without limitation, Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., Kaiser Permanente Insurance Company, The Permanente Federation, the Permanente Medical Groups, and the subsidiaries, partners and successors of the foregoing.

“KP Region(s)” means a KP region(s): i) expressly identified in an Kaiser Permanente Online-Affiliate Enrollment Agreement for which Licensee is providing services for or on behalf of KP if Licensee has entered into an Online-Affiliate Enrollment Agreement with KP, or if Licensee has not entered into such an agreement, the region for which Licensee will be providing services for or on behalf of KP under a fully executed Contract, and ii) in which Licensee requires access to the Web Sites in such region(s) in order for Licensee to fulfill its obligations under its Contract with KP.

“Licensee” means the entity that has entered a Contract to facilitate the Purpose, which requires such entity to have read only access to Kaiser Permanente HealthConnect to fulfill its obligations under such Contract. A Licensee is sometimes also referred to as a “Contractor” or “Provider” or “Provider/Contractor” under such Contracts.

“Member” means a patient who is participating as an enrollee, beneficiary, or member of a Kaiser Permanente Health Plan.

“Subsidiary(s)” has the meaning ascribed to it under a Contract.

“Treatment” and “Payment” each have the meaning ascribed to them under HIPAA.

“Website(s)” means one or more website(s) made available by KFH to Licensee to access the KP HealthConnect® instance(s) of the KP Region(s).

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As reasonably requested by KFH or a Kaiser Permanente entity, Licensee and its Authorized Representatives will cooperate with Kaiser Permanente in establishing, maintaining and terminating Licensee’s Authorized Representatives’ access to the Web Sites, including (without limitation) providing documentation or other information in writing or orally, and access to Licensee’s records, computer equipment and premises as may be reasonably required by Kaiser Permanente to confirm compliance with this License Agreement. Licensee understands and agrees, and shall take all reasonable actions necessary to ensure that all Authorized Representatives associated with Licensee understand and agree,

that Licensee and its Authorized Representatives shall comply with all terms and conditions applicable to the Web Sites, as they may be amended from time to time, and any procedures or restrictions reasonably required by Kaiser Permanente, including but not limited to restrictions on access of unauthorized personnel to information accessed through the Web Sites, the sharing of passwords, reassignment of passwords, and Licensee's immediate notification of Kaiser Permanente when an individual no longer needs access to the Web Sites.

It is the responsibility of Licensee and each of its Authorized Representatives to (1) control the disclosure and use of Web Sites activation codes and passwords; and (2) authorize, monitor and control access to and use of online accounts and passwords for the Web Sites. Licensee is and shall remain fully responsible for the acts and omissions of its Authorized Representatives in connection with the Web Sites and this License Agreement. If Licensee is authorized by Kaiser Permanente to appoint an administrator to manage Licensee's Authorized Representative accounts, Licensee is and shall remain fully responsible for the acts and omissions of its administrator in connection with the Web Sites and this License Agreement. If the administrator is a contractor to Licensee, Licensee will provide relevant contractual documentation between Licensee and the contractor/ administrator (for example, a business associate agreement) to Kaiser Permanente upon request.

### **Responsibility for Privacy and Confidentiality**

All Licensed Material and KP Data, including, but not limited to, patient and Member medical information, shall be treated in a proprietary and confidential manner, and in compliance with applicable state and federal law. Licensee understands and agrees, and shall require all Authorized Representatives associated with Licensee to understand and agree, that this License Agreement and certain data which may be exchanged hereunder is subject to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, and the Health Information Technology and Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, as each is codified in the United States Code, and regulations promulgated thereunder, as and when any of them may be amended from time to time (collectively, "HIPAA"). Irrespective of whether Licensee is a "covered entity" as defined by HIPAA, Licensee and its Authorized Representatives agree to comply with all provisions of HIPAA with respect to individually identifiable health information, including but not limited to the HIPAA standards for privacy, code sets, data transmission and security related to the physical storage, maintenance, transmission of and disclosures of protected health information ("PHI"), as that term is defined under HIPAA and the Privacy Rule issued by the U.S. Department of Health and Human Services (codified at 45 C.F.R. Parts 160 and 164). Licensee represents that it will use and disclose PHI only as permitted by HIPAA and the Privacy Rule (including, but not limited to, the provisions defining what the "minimum necessary" standard is), subject to any additional limitations on the use and disclosure of that information as imposed by this License Agreement. If Licensee or an Authorized Representative sends PHI through electronic means, such electronic data transmissions shall comply with the HIPAA regulations entitled "Security Standards for the Protection of Electronic Protected Health Information" codified at 45 CFR Parts 160 and Subparts A and C of 45 CFR Part 164 (the "Security Rule"). Licensee acknowledges that it may be required to maintain and distribute its Notice of Privacy Practices to and obtain acknowledgments from patients and Members receiving services from Licensee consistent with its practices for other patients. Licensee shall maintain a Notice of Privacy Practices as required by applicable law.

Upon request, Licensee shall provide to Kaiser Permanente reasonable documentation of its compliance with applicable law (e.g., HIPAA) in its use of the Web Sites and the Licensed Materials and KP Data. Except to the extent expressly provided otherwise in any Contract between Licensee and any Kaiser Permanente entity, Licensee shall not, and shall not permit (including, but not limited to, subcontracting or delegating any obligation) access, use or disclosure of patient and Member PHI obtained through the Web Sites, Licensed Materials and KP Data to or by any person or entity that is not located in the United States.

Upon discovery of any actual or potential breach or compromise of Licensee's security program or measures or other unauthorized access or disclosure (collectively, "Data Breach") that may have occurred with respect to any Licensed Materials and KP Data, Licensee shall promptly notify the officials designated by KFH for receipt of such notification by calling the Kaiser National Compliance Hotline at 1-888-774-9100. For the purposes of this section, "discovery" shall mean when any employee or contractor of Licensee (other than the individual responsible for such actual or potential Data Breach) is aware, or should be aware through the exercise of reasonable diligence, of events or evidence indicating the occurrence of the Data Breach at issue. In any such event or as otherwise may reasonably be requested by KFH, Licensee shall promptly conduct a full investigation of any actual or potential Breach, issue, incident or other discrepancy that may arise from its use of the Licensed Materials and KP Data. During each such investigation, Licensee shall submit a report of its initial findings to KFH within two (2) business days after Licensee's discovery of the Breach and provide periodic status reports to KFH as significant new information is obtained thereafter. Licensee shall complete its investigation and submit a written report to KFH within five (5) business days of completing its investigation, and Licensee shall implement and certify in writing the completion of all corrective actions and remediation activities within thirty (30) days of such completion. Notwithstanding the above, if Licensee is unable, after using its best efforts, to complete its investigation and submit a written report to KFH within such five (5) business day period, Licensee must respond to any written questions from KFH about the Data Breach within five (5) days of Licensee's receipt of KFH's questions, and complete its investigation as requested by KFH as soon as practicable, but in no event later than sixty (60) days after discovery of such Data Breach. Licensee shall promptly respond to reasonable requests from KFH and cooperate with KFH in connection with any such investigation, incident management, including external and media relations, and any corrective actions and remediation activities.

Licensee shall indemnify, hold harmless, and if requested, defend KFH, the Permanente Medical Groups, Kaiser Foundation Health Plan and the other entities participating in the Kaiser Permanente medical care program, and their subsidiaries, affiliates and respective officers, directors, employees and agents harmless from and against all liabilities, claims, actions, losses, damages, judgments, orders (judicial or administrative), settlements and other costs and expenses, including reasonable attorneys' fees and costs, or fines or penalties arising from or relating to Licensee's or any of its Authorized Representatives' access to, use or disclosure of the Websites, Licensed Materials or KP Data, or noncompliance with this License Agreement, any End User License Agreement, terms and conditions applicable to the Web Sites, or any law or regulation in its use of or access to the Web Sites and the Licensed Materials and KP Data, including (without limitation) the unauthorized access to or use or disclosure of PHI by any employee or contractor of Licensee or other individual obtaining access to the Web Sites, the Licensed Materials and KP Data by or through Licensee's internet or telecommunication accounts, computers or facilities.

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In the event of a breach or a threatened breach of this License Agreement by Licensee or its Authorized Representatives, either directly or indirectly through another party, the parties agree that such breach or threatened breach shall cause irreparable harm to Kaiser Permanente and Kaiser Permanente shall have the right of specific performance and injunctive relief (without having to post bond), in addition to any and all other remedies and rights at law or in equity, and such rights and remedies shall be cumulative. If it is determined by a court of competent jurisdiction that any provision of this License Agreement is unenforceable for any reason, then the remainder of this License Agreement shall remain in effect and the provision in issue shall be deemed modified in such manner as determined by the court to be enforceable if consistent with the parties’ intent and each party agrees to accept such determination subject to its right to appeal the decision.



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