

California Health and Human Services Data Exchange Framework: Single Data Sharing Agreement

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1. PARTIES

(a) This Single Data Sharing Agreement is made between the California Health and Human Services Agency and Participants who are required to or elect to exchange Health and Social Services Information within the State of California in accordance with this Agreement.

2. PURPOSE AND INTENT

(a) California Health and Safety Code § 130290 was enacted in 2021 and establishes the creation of the California Health and Human Services Data Exchange Framework and requires certain data sharing among entities as set forth in California Health and Safety Code § 130290(f) by January 31, 2024. The framework includes this single data sharing agreement and a set of common policies and procedures.

(b) This Agreement is intended to facilitate data exchange between the Participants in compliance with all applicable federal, state, and local laws, regulations, and policies. This Agreement sets forth a common set of terms, conditions, and obligations to support secure real-time access to, or exchange of, Health and Social Services Information (as defined below) between and among the Participants.

(c) This Agreement is not intended nor designed to: (a) mandate or require a specific technology; (b) create a single entity that exchanges Health and Social Services Information; or (c) create a single repository of data.

3. DEFINITIONS

“**Agreement**” shall mean this Data Sharing Agreement, the Policies and Procedures and the Specifications.

“**Applicable Law**” shall mean all federal, state, local, or tribal laws and regulations then in effect and applicable to the subject matter herein. For the avoidance of doubt, federal government entities are only subject to federal law.

“**Authorization**” shall have the meaning and include the requirements set forth at 45 CFR § 164.508 of the HIPAA Regulations and at Cal. Civ. Code § 56.05 and shall include any additional requirements under Applicable Law for PHI or PII.

“**Breach**” shall mean the unauthorized acquisition, access, disclosure, or use of Health and Social Services Information as set forth in the Policies and Procedures.

“**Business Associate**” shall mean an organization that is defined as a “business associate” in 45 C.F.R. § 160.103 of the HIPAA Regulations.

“**Business Associate Agreement**” shall mean a contract, agreement, or other arrangement that satisfies the requirements of 45 C.F.R. § 164.504(e), as applicable. With regard to Governmental Participants, a Business Associate Agreement may be a memorandum of understanding that satisfies the requirements of 45 C.F.R. § 164.504(e)(3).

“**Confidential Participant Information**” shall mean proprietary or confidential materials or information of a Participant in any medium or format that a Participant labels as such upon disclosure or that given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential. Notwithstanding any label to the contrary, Confidential Participant Information does not include any information which is or becomes known publicly through no fault of the party to which such information is disclosed (a “**Receiving Party**”); is learned of by a Receiving Party from a third party entitled

to disclose it; is already known to a Receiving Party before receipt from the disclosing Participant as documented by the Receiving Party's written records; or, is independently developed by a Receiving Party without reference to, reliance on, or use of, the disclosing Participant's Confidential Participant Information.

"Covered Entity" shall have the meaning set forth at 45 C.F.R. § 160.103 and shall also include the following as these terms are defined in California Civil Code section 56.05, "provider of health care," "health care service plan," and "licensed health care professional."

"Direct Relationship" shall mean a relationship between an Individual User and a Participant that arises when the Participant provides health care or social services to the Individual User.

"Dispute" shall mean any controversy, dispute, or disagreement arising out of or relating to this Agreement.

"Effective Date" shall mean January 31, 2023.

"Federal Participants" shall mean those Participants that are federal entities.

"Governance Entity" shall mean the entity within the California Health and Human Services Agency established to oversee the California Data Exchange Framework, the Framework's Data Sharing Agreement and its Policies & Procedures.

"Governmental Participants" shall mean those Participants that are local, state, or federal entities.

"Health and Social Services Information" shall mean any and all information received, stored, processed, generated, used, transferred, disclosed, made accessible, or shared pursuant to this Agreement, including but not limited to: (a) Data Elements as set forth in the applicable Policy and Procedure; (b) information related to the provision of health care services, including but not limited to PHI; and (c) information related to the provision of social services. Health and Social Services Information may include PHI, PII, de-identified data (as defined in the HIPAA Regulations at 45 C.F.R. §164.514), pseudonymized data, metadata, digital identities, and schema.

"Health Care Provider" shall have the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations.

"HIPAA Regulations" shall mean the standards for privacy of individually identifiable health information, the security standards for the protection of electronic protected health information and the breach notification rule (45 C.F.R. § 160 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as in effect on the Effective Date and as may be amended, modified, or renumbered.

"Hybrid Entity" shall have the same meaning as set forth in 45 C.F.R. § 164.103.

"Individual Access Services" shall mean the services provided to satisfy an Individual User's or Personal Representative's right to access and to obtain a copy of the Individual User's PHI or PII under Applicable Law and to direct that it be sent to a third party consistent with 45 C.F.R. § 164.524 or any other Applicable Law or agreement.

"Individual User" shall mean the person who is the subject of PHI or PII.

"Participant(s)" shall mean each health care organization as set forth in California Health and Safety Code

§ 130290(f) and any other person or organization that is a signatory to this Agreement. Participants may act as either a Submitter, Recipient, or both when exchanging Health and Social Services Information. Participants may include, but are not limited to, a health information network, a community information exchange, a laboratory, a health system, a health IT developer, a community-based organization, a payer, a government agency, a research institute, a Social Services Organization, or any other health care provider.

“**Personally Identifiable Information or PII**” shall have the same meaning as “Personal Information” set forth in Section 1798.140(o) of the California Civil Code.

“**Personal Representative**” shall refer to a person that, under Applicable Law, has authority to act on behalf of an individual as set forth in 45 CFR § 164.502(g).

“**Policies and Procedures**” shall mean the policies and procedures adopted by the Governance Entity pursuant to this Agreement.

“**Protected Health Information or PHI**” shall refer to “protected health information” as set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations and “medical information” as set forth at Civil Code section 56.05.

“**Recipient**” shall mean a Participant that receives Health and Social Services Information from a Submitter. For purposes of illustration only, Recipients include, but are not limited to, Participants who receive queries, responses, subscriptions, publications or unsolicited messages.

“**Social Services**” shall mean the delivery of items and/or services to address social determinants of health and social drivers of health, including but not limited to housing, nutrition, access to food, transportation, employment and other social needs. “Social Services” shall include, but shall not be limited to, services in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive social adjustments. The application of social work principles and methods includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, or groups; providing information and referral services; providing or arranging for the provision of social services; explaining or interpreting the psychosocial aspects in the situations of individuals, families, or groups; helping communities to organize, to provide, or to improve social or health services; doing research related to social work.

“**Social Services Organization**” shall mean an entity that is legally authorized to perform or provide Social Services to individuals. Social Services Organizations can include but are not limited to government entities, community-based organizations, non-profits, and private entities.

“**Specifications**” shall mean the specifications adopted by the Governance Entity pursuant to this Agreement to prescribe the data content, technical, and security requirements to enable the Participants to exchange Health and Social Services Information. Specifications may include, but are not limited to, specific network standards, services, and policies.

“**Submitter**” shall mean a Participant who submits Health and Social Services Information to a Recipient.

“**System**” shall mean software, portal, platform, or other electronic medium controlled by a Participant through which the Participant conducts Health and Social Services Information exchange related activities. For purposes of this definition, it shall not matter whether the Participant controls the software, portal, platform, or medium through ownership, lease, license, or otherwise.

“Treatment” shall have the same meaning as set forth at 45 C.F.R. § 164.501 of the HIPAA Regulations.

4. USE OF HEALTH AND SOCIAL SERVICES INFORMATION.

(a) *Required and Permitted Purposes.* The purposes for which the Participants shall or may acquire, access, use, and disclose Health and Social Services Information pursuant to this Agreement shall be set forth in the Policies and Procedures.

(b) *Prohibition on Use for a Participant’s Direct or Indirect Financial Benefit.* As described in more detail in the Policies and Procedures, Participants shall not be permitted to acquire, access, use, or disclose Health and Social Services Information for their own indirect or direct financial benefit.

5. POLICIES AND PROCEDURES AND SPECIFICATIONS

(a) *Compliance with Terms of this Agreement.* Participants shall at all times abide by this Agreement, including the Policies and Procedures and Specifications.

(i) Policies and Procedures and any future updates to them are hereby incorporated by reference into this Agreement. Policies and Procedures are intended to be flexible to address changing needs and may be modified from time to time through the process outlined in the Policies and Procedures without a need to modify or re-execute this Agreement.

(ii) Specifications and any future updates to them are hereby incorporated by reference into this Agreement. Specifications are intended to be flexible to address changing standards and may be modified from time to time through the process outlined in the Policies and Procedures without a need to modify or re-execute this Agreement.

6. AUTHORIZATIONS

(a) Except for disclosures which may be made without an Authorization under Applicable Law, Participants shall not disclose PHI or PII to another Participant unless a legally valid Authorization has been obtained.

(b) Participants may accept another Participant’s representations that a legally valid Authorization has been obtained. A Participant who provides assurances that an Authorization is legally valid shall indemnify and hold harmless a Participant who reasonably relied upon the assurances, unless the Participant is prohibited from providing such indemnification under Applicable Law.

(c) Participants who have received an Authorization shall:

(i) Be responsible for ensuring the Authorization complies with all Applicable Law;
and

(ii) Be responsible for maintaining documentation as required under Applicable Law and make such documentation available to other Participants in the event of a complaint, litigation, or other dispute. Participants may rely on documentation for a legally valid release of information submitted by third parties who are not Participants.

(d) Before disclosing PHI or PII, a Participant may request a copy of an Authorization and, within a reasonable time of receiving the Authorization, evaluate the Authorization to ensure it is legally valid. Once a Participant has determined the Authorization is legally valid, it shall disclose PHI or PII

consistent with the Authorization and with the request for PHI or PII. A Participant who chooses not to provide assurances that an Authorization is legally valid shall not be liable to the other Participant that acts upon the Authorization for the lack of legal validity of the Authorization.

(e) If a Participant has determined that an Authorization is not legally valid or has been revoked, the Participant shall not disclose PHI or PII but shall inform the Participant requesting PHI or PII that the Authorization is legally insufficient and explain why. In no case shall a Participant disclose PHI or PII if an Authorization has been revoked or is legally insufficient.

7. REQUIREMENT TO EXCHANGE HEALTH AND SOCIAL SERVICES INFORMATION.

Each Participant shall engage in the exchange of Health and Social Services Information as set forth in the Policies and Procedures, either through execution of an agreement with an entity that provides data exchange or through use of their own technology.

8. PRIVACY AND SECURITY

(a) *General.* Each Participant shall at all times fully comply with all Applicable Law relating to this Agreement and the use of Health and Social Services Information.

(b) *Safeguards.* Each Participant shall be responsible for maintaining a secure environment that supports the exchange of Health and Social Services Information pursuant to this Agreement. Participants shall use appropriate safeguards to prevent unauthorized use or disclosure of Health and Social Services Information in a manner consistent with HIPAA Regulations, including implementing appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of that Health and Social Services Information. Participants shall also be required to comply with any Specifications or Policies and Procedures that define requirements and expectations for Participants with respect to enterprise privacy and security. Each Participant represents and warrants that it shall comply with the applicable safeguards as follows:

(i) A Participant with access to PHI or PII shall use safeguards identified in the HIPAA Security Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and C, as safeguards, standards, “required” implementation specifications, and “addressable” implementation specifications to the extent that the “addressable” implementation specifications are reasonable and appropriate in the Participant’s environment. If an “addressable” implementation specification is not reasonable and appropriate in the Participant’s environment, then the Participant must document why it would not be reasonable and appropriate to implement the implementation specification and implement an equivalent alternative measure if reasonable and appropriate;

(ii) Governmental Participants shall take all appropriate safeguards required by Applicable Law or policies issued by government entities related to information privacy and security, including to the extent applicable, HIPAA; or

(iii) Social Service Organizations shall take all appropriate safeguards required by Applicable Law, policies set forth by applicable federal or state government entities (such as but not limited to regulatory agency guidance), or required by a legally enforceable agreement with a government entity, Governmental Participant, or other Social Services Organization.

(c) *Policies and Procedures and Training.* Each Participant shall, pursuant to this Agreement, Applicable Law, or applicable federal and state guidance, have written privacy and security policies relating to the use and disclosure of PHI or PII that are consistent with and satisfy the requirements set forth in the

HIPAA Regulations. Before granting access to PHI or PII, each Participant shall train staff, contractors, agents, employees, and workforce members, as defined under the HIPAA Regulations, who will have access to PHI or PII under this Agreement. Each Participant shall also provide refresher training consistent with each Participant's internal privacy and security policies but no less than annually.

(d) *Malicious Software.* Each Participant shall ensure that it employs security controls that meet applicable industry or Federal standards so that Health and Social Services Information exchanged pursuant to this Agreement and any method of exchanging such information will not introduce any viruses, worms, unauthorized cookies, trojans, malicious software, "malware," or other program, routine, subroutine, or data designed to disrupt the proper operation of a System or any part thereof or any hardware or software used by a Participant in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause a System or any part thereof or any hardware, software or data used by a Participant in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable. In the absence of applicable legal or industry standards, each Participant shall use all commercially reasonable efforts to comply with the requirements of this Section.

(e) *Breach Notification.* Participants shall comply with the Breach Notification requirements as set forth in the Policies and Procedures.

9. SPECIAL COMPLIANCE PROVISIONS AND APPLICABILITY OF HIPAA

(a) To support the privacy, confidentiality, and security of PHI, each Participant hereby represents and warrants:

(i) If the Participant is a Covered Entity or a covered component of a Hybrid Entity, the Participant does, and at all times shall, comply with the HIPAA Regulations to the extent applicable and with Applicable Law.

(ii) If the Participant is a Business Associate, the Participant does, and at all times shall, comply with the provisions of its Business Associate Agreements (or for governmental entities relying upon 45 C.F.R. part 164.504(e)(3)(i)(A), its Memoranda of Understanding) and Applicable Law.

(iii) If the Participant is a Governmental Participant, the Participant does, and at all times shall, comply with Applicable Law.

(iv) If the Participant is a Social Services Organization, the Participant does, and at all times shall, comply with Applicable Law, any applicable contract, and policies set forth by applicable federal or state government entities.

(v) Except as otherwise set forth in this Agreement, if the Participant is neither a Covered Entity, a Business Associate, covered component of a Hybrid Entity, Social Services Organization, nor a Governmental Participant, the Participant shall, as a contractual standard, at all times, at a minimum, comply with the provisions of the HIPAA Regulations at 45 CFR Part 164 as if it were acting in the capacity of a Covered Entity or such other standards as may be adopted by the Governance Entity.

(b) Each Participant acknowledges Participants do not become a Business Associate of another Participant by virtue of signing this Agreement or exchanging PHI pursuant to this Agreement.

10. MINIMUM NECESSARY

(a) Any use or disclosure of PHI or PII pursuant to this Agreement will be limited to the minimum PHI or PII necessary to achieve the purpose for which the information is shared, except where limiting such use or disclosure to the minimum necessary is not feasible and is not required under the HIPAA Regulations.

(b) Participants shall not request more PHI or PII than necessary to achieve the purpose of the request for PHI or PII.

(c) This Section shall not apply in the following circumstances:

(i) A disclosure of PHI to or request by a Health Care Provider for Treatment;

(ii) A disclosure to an Individual User who is the subject of the information;

(iii) A disclosure pursuant to an Individual User's Authorization; or

(iv) Disclosures that are required by law as described in 45 C.F.R. part 164.512(a) or Applicable Law.

11. INDIVIDUAL ACCESS SERVICES¹

(a) *Individual User Access.* An Individual User or Personal Representative may assert their right of Individual Access Services with respect to a Participant if the Participant has a Direct Relationship with the Individual User. The Participant may require the Individual User or Personal Representative to assert their right to access their PHI or PII in writing, which may be done electronically, and, to the extent permitted by HIPAA, may require such Individual User or Personal Representative to use the Participant's own supplied form. Each Participant shall provide the Individual User or Personal Representative with the option of using electronic means (e.g., email or secure web portal) or other such means as determined by the Governance Entity to assert their rights for Individual Access Services to PHI or PII.

(b) *Individual Use or Disclosure of PHI or PII.* Individuals shall have the right to Use or Disclose their own PHI or PII without any limitations.

(c) *Authentication.* Prior to initiating Individual Access Services, the Participant shall be required to verify the identity of the Individual User or Personal Representative using standards and methods consistent with 45 CFR § 164.514(h).

(d) *No Fees for Individual Access Services.* A Participant may not charge another Participant any amount for PHI or PII exchanged in furtherance of this Section.

(e) *Processing of Individual Access Services Requests.* Participants shall process Individual User or Personal Representative requests for Individual Access Services as follows:

(i) Each Participant that receives a request for Individual Access Services from an Individual User or Personal Representative with whom it has a Direct Relationship shall provide such Individual User or Personal Representative with Individual Access Services with respect to their PHI or PII

¹ NTD: Consider moving into Policies and Procedures.

regardless of whether the Participant is a Covered Entity or Business Associate; provided, however, that if the Individual User wants the PHI or PII to go to a third party, the Individual User has satisfied the conditions at 45 C.F.R. part 164.524(c)(3)(ii) as it applies to PHI or PII;

(ii) When the Participant is acting as a Business Associate and the request for Individual Access Services is received by a Covered Entity Participant that directs the Business Associate Participant to satisfy the request, then the Business Associate Participant may respond to a request for Individual Access Services if permitted or required by the terms of the applicable Business Associate Agreement or otherwise required by Applicable Law; or

(iii) With respect to a Participant query for Individual Access Services, the response shall be provided as required by these terms and conditions regardless of whether it was prompted by (a) the Individual User; or (b) a Participant, who provides Individual Access Services and has been selected by the Individual User who is requesting PHI or PII for Individual Access Services.

12. COOPERATION AND NON-DISCRIMINATION

(a) Each Participant understands and acknowledges that numerous activities with respect to this Agreement shall likely involve another Participant's employees, agents, third party contractors, vendors, or consultants. To the extent not legally prohibited, each Participant shall:

(i) Cooperate fully with the Governance Entity, each other Participant, and any such third parties with respect to such activities as they relate to this Agreement;

(ii) Provide such information to the Governance Entity, each other Participant, or such third parties as they may reasonably request for purposes of performing activities related to this Agreement;

(iii) Actively engage in the bilateral or multilateral exchange of information with other Participants as both a Submitter and Recipient of information to the extent permitted or required under this Agreement and Applicable Law;

(iv) Devote such time as may reasonably be requested by the Governance Entity to review information, meet with, respond to, and advise the Governance Entity or other Participants with respect to activities as they relate to this Agreement;

(v) Provide such reasonable assistance as may be requested by the Governance Entity when performing activities as they relate to this Agreement; and

(vi) Subject to a Participant's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting a Participant's Confidential Participant Information, provide information and assistance to the Governance Entity or other Participants in the investigation of Breaches and Disputes. In no case shall a Participant be required to disclose PHI or PII in violation of Applicable Law.

(b) In seeking another Participant's cooperation, each Participant shall make all reasonable efforts to accommodate the other Participant's schedules and reasonable operational concerns. A Participant shall promptly report, in writing, to any other Participant and the Governance Entity, any problems or issues that arise in working with the other Participant's employees, agents, or subcontractors that threaten to delay or otherwise adversely impact a Participant's ability to fulfill its responsibilities under this Agreement. This writing shall set forth in detail and with clarity the problems that the Participant has identified.

(c) *Prohibition on Exclusivity.* A Participant may not require exclusivity or otherwise prohibit (or attempt to prohibit) any other Participant, entity, or individual, from joining or exchanging Health and Social Services Information under this Agreement.

(d) *No Discriminatory Limits on Exchange of Health and Social Services Information.* A Participant shall not unfairly or unreasonably limit exchange or interoperability with any other Participant or Individual User such as by means of burdensome testing requirements that are applied in a discriminatory manner or other means that limit the ability of a Participant to send or receive Health and Social Services Information with another Participant or Individual User or slows down the rate at which such Health and Social Services Information is sent or received if such limitation or slower rate would have an anti-competitive effect.

13. INFORMATION BLOCKING

(a) Participants shall not engage in any practice that constitutes information blocking defined under 42 U.S. Code § 300jj-52, its implementing regulations and as set forth in the Policies and Procedures, if any.²

14. LEGAL REQUIREMENTS

(a) *Monitoring and Auditing.* The Governance Entity, acting through its agents and independent contractors, in order to confirm compliance with this Agreement, shall have the right, but not the obligation, to monitor and audit Participants' compliance with their obligations under this Agreement as set forth in the Policies and Procedures. Unless prohibited by Applicable Law, Participants shall cooperate with the Governance Entity in these monitoring and auditing activities and shall provide, upon the reasonable request of the Governance Entity, complete and accurate information in the furtherance of its monitoring and auditing activities. To the extent that any information provided by Participants to the Governance Entity in connection with such monitoring and auditing activities constitutes Confidential Participant Information, the Governance Entity shall hold such information in confidence and shall not redisclose such information to any person or entity except as required by Applicable Law.

15. REPRESENTATIONS AND WARRANTIES.

Each Participant hereby represents and warrants the following:

(a) *Execution of the Agreement.* Each Participant affirms that it has full power and authority to enter into and perform this Agreement and has taken whatever measures necessary to obtain all required approvals or consents in order for it to execute this Agreement. The representatives signing this Agreement on behalf of the Participants affirm that they have been properly authorized and empowered to enter into this Agreement on behalf of the Participant.

(b) *Compliance with this Agreement.* Except to the extent prohibited by Applicable Law, each Participant shall comply fully with all provisions of this Agreement. To the extent that a Participant delegates its duties under this Agreement to a third party (by contract or otherwise) and such third party will have access to Health and Social Services Information, that delegation shall be in writing and require the third party, prior to exchanging Health and Social Services Information with any Participants, to agree to the same restrictions and conditions that apply through this Agreement to a Participant. If a Governmental Participant determines, after reasonable diligence, that any action or inaction relative to an obligation, including conformance to changes in the Specifications or Policies and Procedures will cause it to violate

² NTD: As drafted, this provision would expand the entities required to comply with these rules.

Applicable Law, the Governmental Participant may terminate this Agreement immediately upon sending written notice to the Governance Entity.

(c) *Compliance with Specifications, Policies and Procedures.* Each Participant affirms that it shall fully comply with any and all Specifications and Policies and Procedures.

(d) *Accuracy of Health and Social Services Information.* When acting as a Submitter, each Participant hereby represents that at the time of transmission, the Health and Social Services Information it provides is (a) an accurate representation of the data contained in, or available through, its System, (b) sent from a System that employs security controls that meet industry standards so that the Health and Social Services Information being transmitted is intended to be free from malicious software in accordance with Section 8, and (d) provided in a timely manner and in accordance with the Policies and Procedures. Other than those representations elsewhere in this Agreement, the Submitter makes no other representation, express or implied, about the Health and Social Services Information.

(e) *Express Warranty of Authority to Exchange Health and Social Services Information.* To the extent each Participant discloses Health and Social Services Information to another Participant, the Participant represents and warrants that it has sufficient authority to disclose such Health and Social Services Information.

(f) *Third Party Technology.* All Participants acknowledge that other Participants use technology solutions, applications, interfaces, software, platforms, clearinghouses and other IT resources to support exchange of Health and Social Services Information that may be provided by third parties (“**Third Party Technology**”). Each Participant shall have agreements in place that require Third Party Technology vendors (i) to provide reliable, stable and secure services to the Participant and (ii) to adhere to the same privacy and security standards applicable to the Participant pursuant to this Agreement. However, all Participants acknowledge that Third Party Technology may be non-functional or not available at times and that this could prevent a Participant from transmitting Health and Social Services Information. Participants do not make any representations or warranties as to their Third Party Technology.

16. TERM, SUSPENSION, AND TERMINATION

(a) *Term.* This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with this Section or the Policies and Procedures.

(b) *Termination by a Participant.* A Participant who is not legally required to sign this Agreement by California Health and Safety Code § 130290 may terminate this Agreement, with or without cause, by giving the Governance Entity at least ten (10) business days prior written notice.

(c) *Effect of Termination.* Upon any termination of this Agreement for any reason, the terminated party shall cease to be a Participant and thereupon and thereafter that party shall have no rights under this Agreement to exchange data with other Participants. In the event that any Participant(s) is terminated, this Agreement will remain in full force and effect with respect to all other Participants. Termination of this Agreement shall not affect any rights or obligations which by their terms should survive termination or expiration.

(d) *Enforcement Action.* The Participants hereby grant to the Governance Entity the power to enforce any portion of this Agreement through measures set forth in the Policies and Procedures. Such measures may include, but are not limited to, suspension or termination of a Participant’s right to exchange Health and Social Services Information.

17. PARTICIPANT LIABILITY

(a) *Participant Liability.*³ Each Participant shall be responsible for its acts and omissions and not for the acts or omissions of any other Participant. In circumstances involving harm to other Participants caused by the acts or omissions of individuals who transmit Health and Social Services Information through the Participant or by use of any password, identifier, or log-on received or obtained directly or indirectly, lawfully or unlawfully, from the Participant, each Participant shall be responsible for such harm to the extent that the harm was caused by the Participant's breach of the Agreement or its negligent conduct for which there is a civil remedy under Applicable Law. Notwithstanding any provision in this Agreement to the contrary, Participant shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This Section shall not be construed as a hold harmless or indemnification provision.

18. MISCELLANEOUS/GENERAL PROVISIONS

(a) *Governing Law.* The construction, interpretation and performance of this Agreement shall be governed and enforced pursuant to the laws of the State of California, without giving effect to its conflicts of laws provisions, except to the extent California law is preempted by any provision of federal law.

(b) *Assignment.* No Party shall assign or transfer this Agreement, or any part thereof, without the express written consent of the Governance Entity, which shall not be unreasonably delayed or denied. Any assignment that does not comply with the requirements of this Section 18(c) shall be void and have no binding effect.

(c) *Survival.* All Sections which by their nature are meant to survive this Agreement shall survive expiration or termination of this Agreement.

(d) *Waiver.* No failure or delay by any party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.

(e) *Captions.* Captions appearing in this Agreement are for convenience only and shall not be deemed to explain, limit or amplify the provisions of this Agreement.

(f) *Entire Agreement.* This Agreement sets forth the entire and only Agreement among the parties relative to the subject matter hereof. Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon any party.

(g) *Validity of Provisions.* In the event that a court of competent jurisdiction shall hold any Section, or any part or portion of any Section of this Agreement, invalid, void or otherwise unenforceable, each and every remaining Section or part or portion thereof shall remain in full force and effect.

(h) *Priority.* In the event of any conflict or inconsistency between a provision in the body of this Agreement, the terms contained in the body of this Agreement shall prevail.

(i) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding agreement when each party shall have executed one counterpart.

³ NTD: Should we include a cap on liability?

(j) *Third-Party Beneficiaries.* With the exception of the parties to this Agreement, there shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

(k) *Force Majeure.* No party shall be responsible for any delays or failures in performance caused by the occurrence of events or other circumstances that are beyond its reasonable control after the exercise of commercially reasonable efforts to either prevent or mitigate the effect of any such occurrence or event.

(l) *Time Periods.* Any of the time periods specified in this Agreement may be changed pursuant to the mutual written consent of the Governance Entity and the affected Participant(s).

DRAFT