# CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

BETWEEN

SAN JOAQUIN COUNTY HEALTH COMMISSION

AND

CLICK OR TAP HERE TO ENTER PARTY NAME

This Confidentiality and Nondisclosure Agreement (this “Agreement”) is made and entered into as of the last date of signature below (the “Effective Date”) by and between San Joaquin County Health Commission (“Commission”), operating and doing business as Health Plan of San Joaquin and Mountain Valley Health Plan (“Health Plan”), a local initiative established under Section 5-7100 of the Ordinance Code of San Joaquin County, and Click or tap here to enter Party Name (“Receiving Party”), each referred to individually as a “Party” and collectively as the “Parties.”

**WHEREAS**, the Parties desire to discuss the possibility of entering into a business transaction with each other (the “Transaction”);

**WHEREAS**, Health Plan owns and possesses certain valuable proprietary and confidential information, including information concerning its members, healthcare providers, and business practices;

**WHEREAS**, Health Plan may disclose its confidential and privileged information to Receiving Party as necessary to facilitate the evaluation, discussion, preparation and implementation of the Transaction; and

**WHEREAS**, Health Plan desires that Receiving Party keep any such information confidential.

**NOW, THEREFORE**, in consideration of the disclosure of such information and as a condition to the commencement of discussions concerning the Transaction, Receiving Party will keep such information confidential in accordance with the terms and conditions set forth in this Agreement and hereby agrees as follows:

1. **Confidential Information.** For the purposes of this Agreement, the term “Confidential Information” shall apply to all information and materials in any form, including oral and electronic, received by Receiving Party from Health Plan at any time prior to or following the execution of this Agreement. Confidential Information includes information related to the business or activities of Health Plan and its members and providers, including, but not limited to: (i) all information relating to the Health Plan’s business such as drawings; designs; specifications; data; manuals; know-how; software; processes; ideas; inventions (whether patentable or not); patents; patent applications; trade secrets; client, customer, or vendor lists and information; historical or prospective financial information; budgets, cost, and expense data; rate or pricing information and data; marketing information; health care benefits or benefit designs; employee and employment-related information; records and contracts; and patient, client, customer or Health Plan member information which contains personally-identifiable health, medical or contact (including names, addresses, telephone numbers, and social security numbers) information; and (ii) all information that is developed, created or discovered by Receiving Party, either individually or in collaboration with others, in evaluating the Transaction. The restrictions on use and disclosure of Confidential Information under this Agreement shall not extend to information for which the Receiving Party can demonstrate (i) was already known by the Receiving Party prior to this Agreement and is not subject to another obligation of confidentiality, (ii) is/was publicly known through no unauthorized act of the Receiving Party, (iii) is/was lawfully received from a third party without restriction on use or disclosure where such third party had the legal right to disclose such information, (iv) is/was independently developed by the Receiving Party without use of Health Plan’s Confidential Information, (v) is/was pre-approved for disclosure in writing by an authorized representative of Health Plan, or (vi) is/was disclosed as required by law, governmental agency or rule, or court order, provided that Receiving Party complies with the requirements set forth in Section 2 below.
2. **Use of Confidential Information.** Receiving Party shall not use the Confidential Information other than as necessary in the ordinary course of evaluating the Transaction, or as required by law. Receiving Party shall hold the Confidential Information in strict confidence and shall protect the Confidential Information in the same manner and to the seam extent Receiving Party uses to protect its own confidential proprietary information, but in any event not less than reasonable means, to prevent the unauthorized disclosure to third parties and to protect the confidentiality of the Confidential Information. Receiving Party represents that its staff members, or as applicable, officers and employees, are obligated as a condition of employment or engagement to comply with the terms of this Agreement. If Receiving Party provides Confidential Information to any third party, Receiving Party shall be held responsible for any unauthorized disclosure made by such third party. In the event that Receiving Party or any of its representatives receives a request or demand to disclose all or any part of the Confidential Information under the terms of a subpoena or order issued by a court of competent jurisdiction, an agency of any State of the United States or of any other jurisdiction, Receiving Party agrees to promptly notify Health Plan of the existence, terms and circumstances surrounding such a request so that Health Plan may seek a protective order or other appropriate relief or remedy, oversee Receiving Party’s response to such a request, and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not then obtained, Receiving Party agrees to furnish only that portion of the Confidential Information which it is legally required to disclose as advised by written opinion of Receiving Party’s legal counsel. Receiving Party agrees to use its best efforts to ensure that confidential treatment will be accorded to such Confidential Information.
3. **Protected Health Information.** To the extent Receiving Party has access to or receives protected health information (“PHI”) as such term is defined in 45 C.F.R. 164.501, Receiving Party shall use and disclose such PHI only in accordance with the Privacy Rule as set forth in the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and its implementing regulations (“HIPAA Rules”), or applicable state law if more restrictive. Receiving Party shall also safeguard any electronic protected health information it creates, receives, maintains, or transmits on behalf of Health Plan as required by the Security Rule under the HIPAA Rules and under the Health Information Technology for Economic and Clinical Health Act, as amended from time to time, and its implementing regulations (“HITECH Act”). Receiving Party may only use or disclose PHI in accordance to the laws and regulations noted above whether or not Receiving Party qualifies as a “Business Associate” under HIPAA and the HITECH Act. Furthermore, if Health Plan determines in its sole discretion that additional agreements between the Parties are necessary to comply with the laws and regulations above, Receiving Party shall promptly enter into such agreements with Health Plan. Receiving Party agrees, and shall cause its respective employees, agents and subcontractors to agree, not to use or disclose PHI it receives other than as permitted or required by law or this Agreement, to use commercially reasonable and appropriate safeguards to prevent the use or disclosure of the PHI (other than as needed to evaluate the Transaction), to mitigate, to the extent practicable, any harmful effect that is known with respect to a use or disclosure of PHI in violation of this Agreement, to immediately report to Health Plan any use or disclosure of PHI not provided for by this Agreement, and to make internal practices, books and records relating to the use and disclosure of PHI received from (or created or received by Receiving Party on behalf of) Health Plan available to Health Plan for purposes of determining compliance with this Agreement. Except as otherwise permitted herein, upon termination of this Agreement for any reason, Receiving Party shall return or destroy, and shall cause its respective employees, agents and subcontractors to return or destroy, all PHI received from Health Plan. Receiving Party and its employees, agents and subcontractors shall retain no copies of any PHI provided during the consideration of the Transaction.
4. **Notice.** Receiving Party agrees to notify Health Plan within one (1) business day upon discovery of any breach or suspected breach of a material term of this Agreement, unless earlier notice is required as otherwise set forth in this Agreement such as for the improper use or disclosure of Confidential Information or PHI. Any notices to be given under this Agreement to a Party shall be made via certified U.S. Mail or express courier to such Party’s address given below or via facsimile to the facsimile telephone numbers listed below.

|  |  |
| --- | --- |
| **If to Contractor, to:** | **If to HEALTH PLAN, to:** |
| Attn: Enter Point of Contact Name  Company Name  Address  City, State, Zip Code  email: Enter email address | Attn: Contract Administration  Health Plan of San Joaquin  7751 South Manthey Road  French Camp, CA 95231-9802  email: contractadmin@hpsj.com |

1. **Term and Termination.** This Agreement shall commence on the Effective Date and shall continue as long as Confidential Information remains confidential. Upon written notice from one Party to the other, this Agreement may be earlier terminated only as to Confidential Information that has not yet been disclosed.
2. **Return of Confidential Information.** Upon expiration or earlier termination of this Agreement, or upon the written request at any time by Health Plan, Receiving Party shall, within five (5) business days from such termination or request, return all copies of Confidential Information to Health Plan or certify in writing, if so requested by Health Plan that all copies of Confidential Information have been destroyed. If return of Confidential Information is infeasible for any reason, all terms of this Agreement shall remain in full force and effect as long as the Receiving Party retains possession of the Confidential Information.
3. **Irreparable Damages.** The Parties agree that money damages would not be a sufficient remedy for any breach of this Agreement. Receiving Party acknowledges that Health Plan may suffer irreparable damage in the event of any breach of the provisions of this Agreement. Accordingly, in such event, Health Plan will be entitled to preliminary and permanent injunctive relief, as well as any other applicable remedies at law or in equity, against the Receiving Party in the event of a breach, or threatened breach, to this Agreement without proof of actual damages. Receiving Party waives any requirement for the securing or posting of any bond in connection with any such remedy.
4. **Modification and Waiver.** No change or modification of this Agreement shall be valid unless the same is in writing and signed by the Parties. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the person against whom it is sought to be enforced. The failure of either Party at any time to insist upon strict performance of any condition, promise, agreement, or understanding set forth in this Agreement shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time.
5. **Assignment.** This Agreement shall not be assigned, in whole or in part, by the Receiving Party without the prior written consent of Health Plan. Any purported assignment in violation of the foregoing shall be null and void.
6. **Indemnification.** Receiving Party shall indemnify, defend, and hold harmless Health Plan (and its board members, directors, officers, and employees) from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys' fees), damages, claims, suits, and/or demands directly or indirectly arising out of, or resulting from, any act or omission of Receiving Party (or its employees, agents, subcontractors or other representatives) related to any breach of any representation, warranty, covenant, agreement or other obligation contained in this Agreement.
7. **Governing Law.** This Agreement shall be enforced under and construed in accordance with the laws of the State of California, without regard to any of its conflicts of law provisions to the contrary. The venue for any proceeding concerning this Agreement will be San Joaquin County, California.
8. **Attorney's Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, or if any proceedings between the Parties arise out of this Agreement, including any tort claims, the prevailing Party shall be entitled to reasonable attorney's fees, costs, expenses and necessary disbursements, in addition to any other relief to which the Party may be entitled.
9. **Counterparts.** This Agreement may be executed in counterparts and delivered by facsimile or electronically and, when so executed and delivered, shall be considered an original and all such counterparts shall together constitute one instrument.
10. **Severability.** In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.
11. **Entire Agreement.** This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof and supersedes all prior Agreements or understandings, oral or written, with respect to the subject matter hereof. Furthermore, for the avoidance of doubt, nothing in this Agreement obligates HEALTH PLAN to enter into the Transaction with Receiving Party.
12. **Survival.** The obligations of the Receiving Party under this Agreement shall survive the termination of this Agreement and remain in force as long as Receiving Party stores or maintains Confidential Information in any form or format (including archival data). Termination of this Agreement shall not affect any provision of this Agreement that, by wording or nature, are intended to remain effective and to continue in operation.

## ***[Signatures to Follow]***

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date below.

|  |  |  |
| --- | --- | --- |
| **San Joaquin County Health Commission, dba Health Plan of San Joaquin and Mountain Valley Health Plan** |  | **Enter Party Name** |
| **By:**  **Name:**  **Title:**  **Date:** |  | **By:**  **Name:**  **Title:**  **Date:** |

[remainder of this page left blank intentionally]