

## SETTLEMENT AGREEMENT

### *Metzler et al. v. Kaiser Foundation Health Plan, Inc. et al.*

This Settlement Agreement is entered into and made effective on this \_\_\_ day of March, 2001, by and between (a) Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals, California nonprofit corporations with offices at 1950 Franklin Street, Oakland, CA 94612, and (b) Plaintiffs, who are individuals with disabilities.

### PARTIES

The parties to this Settlement Agreement (hereinafter, "Agreement") are the following:  
Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals (hereinafter, "Kaiser"); and  
John Metzler, Johnnie Lacy, and John Lonberg (hereinafter, "Plaintiffs").  
Kaiser and Plaintiffs are referred to herein as "the parties."

### RECITALS

Whereas, Kaiser Permanente—California Division is a nonprofit health maintenance organization in California;

Whereas, Kaiser Permanente—California Division is comprised of Kaiser Foundation Health Plan, Inc., Kaiser Foundation Health Plan, The Permanente Medical Group, Inc., and the Southern California Permanente Medical Group;

Whereas, Kaiser Permanente—California Division is both a health plan and a direct provider of health care services;

Whereas Kaiser owns, leases, and/or operates 26 hospitals and 120 medical office buildings in California;

Whereas, Plaintiffs, who are persons with disabilities, brought an action, on behalf of themselves and the general public, against Kaiser, in the Superior Court for the State of California, Alameda County, Case No. 829265-2, alleging that Kaiser fails to provide people with mobility disabilities full and equal access to Kaiser Permanente—California Division's health services and facilities, in violation of California Civil Code §§ 51, *et seq.*, 54, *et seq.*, and 3345, California Government Code §§ 11135, *et seq.*, and the regulations promulgated thereunder, and Section 17200 of the California Business and Professions Code;

Whereas Kaiser denies any and all liability to Plaintiffs and denies that it has violated any laws pertaining to access for people with disabilities;

Whereas, the parties are committed to ensuring that people with disabilities have full and equal access to Kaiser facilities and services;

Whereas, the parties wish to avoid the expenses and risks of costly and time-consuming litigation; and

Whereas, the parties agree that disabled persons who use Kaiser facilities and seek Kaiser health services will be better served by implementation of the provisions set forth in this Agreement than by further pursuit of litigation;

Therefore, in consideration of the mutual covenants and agreements contained herein, the parties have entered into this Agreement.

### DEFINITIONS

The parties agree to work together in good faith to arrive at mutually agreed upon definitions for the following terms. This section is not a material term of this Agreement.

Access Features

Access Laws

Accessible Medical Equipment (including high-priority accessible medical equipment)  
[Clarify that includes imaging equipment as well.]

Access Plan

ADAAG

Advisory Committee

Barriers (including high-priority barriers)

Executive Sponsor Oversight Team

Barrier Removal

Facilities

Members

Plaintiffs

Plaintiffs' Counsel

Program Manager

Providers

Service Area

Technical Resource Work Groups

Title 24

## **AGREEMENT**

### **I. COORDINATION AND OVERSIGHT OF IMPLEMENTATION OF ACCESS PLAN**

1. Kaiser will appoint an Access Coordinator (or Coordinating Committee) with appropriate expertise in ensuring health care access for people with disabilities. The appointment of the Access Coordinator (or Coordinating Committee) shall be subject to the approval of Plaintiff's Counsel, provided that such approval shall not be unreasonably withheld. The Access Coordinator (or Coordinating Committee) will oversee the implementation and maintenance of the Access Plan outlined herein. The Access Coordinator (or Coordinating Committee) shall be appointed within one year of the effective date of this Agreement. The parties contemplate that the Access Coordinator (or those comprising the Coordinating Committee) will be an existing or future Kaiser employee. If an Access Coordinating Committee serves the functions of the Access Coordinator, it shall be comprised of no more than three members and shall have a chairperson who will be responsible for ensuring that the Access Coordinating Committee carries out its responsibilities.
2. Until the Access Coordinator (or Coordinating Committee) is in place, Kaiser's Program Manager will oversee Kaiser's initial efforts to identify and remove barriers and increase access in accordance with this Agreement. Subject to the supervision of the Executive Sponsor Oversight Team and the Advisory Committee established by Kaiser, the Program Manager will consult and coordinate with outside access specialists (as provided for herein) and Kaiser's technical resource work groups and will oversee the

administration of the Access Plan outlined herein. For the first year following the effective date of this Agreement, the Program Manager shall provide Plaintiffs' Counsel with comprehensive reports every two months regarding the implementation of the Access Plan.

3. With input from Plaintiffs' Counsel, Kaiser will establish a system for receiving and promptly addressing complaints regarding access problems. The Access Coordinator (or Coordinating Committee) shall oversee this system. Until a permanent system is in place, the Program Manager will oversee a coordinated response to complaints about access problems. The procedure for reporting access problems will be clearly communicated in writing to Kaiser members and staff.
4. The parties will develop a mechanism for receiving and responding to ongoing input regarding access from Kaiser members with disabilities.

## **ACCESS PLAN**

### **II. MODEL FACILITIES**

5. Kaiser will designate the Kaiser Permanente Medical Center in San Francisco, California and the Kaiser Permanente Medical Center in Riverside, California as "Model Facilities." In addition to being the starting point for architectural-barrier and inaccessible-medical-equipment surveys, barrier removal, and accessible-medical-equipment installation, the model facilities will serve as laboratories for the development of effective policies, procedures, and programs to increase access and improve the delivery of health services for people with disabilities throughout Kaiser's health care system in California. At the model facilities, during a pilot period, running from the effective date of this Agreement until July 1, 2002, Kaiser, with the assistance of Plaintiffs' Counsel and the Access Policy Consultant(s) and/or work group(s) provided for herein, will explore how Kaiser can better provide and manage care for people with disabilities. Thereafter, effective aspects of the model programs will be replicated throughout Kaiser's California system. The development of these pilot programs at the model facilities will not preclude systemwide implementation of improved policies, procedures, and programs that should be put in place more quickly and that do not require initial study at the model facilities.

### **III. ARCHITECTURAL ACCESS**

6. Kaiser will retain a jointly-selected "Architectural Access Specialist," with expertise in identifying and remedying architectural barriers, to oversee a systemwide evaluation of Kaiser facilities in California ("California-wide"). The Architectural Access Specialist will create an evaluation plan; supervise the survey of Kaiser facilities, using Kaiser Facilities Department staff to the maximum extent feasible; and prepare, or assist in the preparation of, a final report and interim reports identifying barriers and making recommendations for improving access. The reports should include cost estimates and a suggested order of priorities and reasonable time-lines for the removal of barriers. Priority will be placed on timely and orderly removal of the most significant ("high-priority") barriers.

- a. The Architectural Access Specialist will begin with a comprehensive survey of the two model facilities and a report of findings and recommendations regarding the model facilities. This survey will begin by March 1, 2001, and will be completed within ninety (90) days. The Architectural Access Specialist's report regarding the model facilities, including recommendations for barrier removals and suggested prioritization of barrier removals, shall be completed within ninety (90) days of the survey's completion. Upon its completion, this report shall be provided to Plaintiffs' counsel and the third-party Facilitator (provided for in ¶¶ 24-25), but shall otherwise remain confidential. Based on the Architectural Access Specialist's report and recommendations, within sixty (60) days of its receipt, the parties will develop a reasonable action plan and time-line to remedy the barriers identified at the model facilities. High-priority barriers will be removed at the model facilities within two years of the effective date of this Agreement.
- b. Based on the survey of the model facilities, a review of the survey and barrier-identification work already done by Kaiser, and an objective assessment of Kaiser's internal capacity to survey its facilities, the parties, in consultation with the Architectural Access Specialist, will develop a plan to survey the remaining Kaiser health care facilities in California. This plan will allow for appropriate participation of the Kaiser Facilities Department and may include reliance on survey work performed by Kaiser personnel who have been trained by the Architectural Access Specialist. Kaiser will cooperate in good faith in conducting such surveys. The Architectural Access Specialist shall oversee the survey process to ensure its accuracy. The parties contemplate that such oversight shall consist of developing survey instruments, training surveyors, spot-checking, and such other measures as are deemed appropriate by the Architectural Access Specialist. Development of the plan for the California-wide survey will be completed within one hundred-eighty (180) days of the completion of the report regarding architectural access at the model facilities. Upon its completion, the plan shall be provided to the third-party Facilitator.
- c. Implementation of the plan for a systemwide survey of Kaiser facilities in California may proceed on a service area basis, provided that top priority will be placed on surveying and removing barriers at Kaiser facilities in Oakland, Hayward, Fontana, and Vallejo.
- d. During the course of the California-wide survey, Kaiser (in consultation and coordination with the Architectural Access Specialist) will produce interim reports every ninety (90) days. These reports will include high-priority recommendations for barrier removal. These interim reports shall be provided to Plaintiffs' Counsel and the third-party Facilitator, but shall otherwise remain confidential.
- e. Kaiser will make a good faith effort to remedy high-priority barriers before the completion of the California-wide survey and final report. Quarterly interim

reports will document barrier removals completed within the 90-day period covered by each report and barrier-removal efforts slated for the coming quarter. These interim reports shall be provided to Plaintiffs' Counsel and the third-party Facilitator, but shall otherwise remain confidential.

- f. The California-wide survey will be completed within thirty (30) months of the effective date of this Agreement. A final report identifying barriers and making recommendations for barrier removal shall be completed with ninety (90) days of the completion of the California-wide survey.
  - g. Within sixty (60) days of receiving the final report regarding architectural barriers, the parties will develop a reasonable action plan and time-line for the removal of access barriers. The plan and time-line for barrier removal shall be provided to the third-party Facilitator.
  - h. If disputes arise in developing the action plans and time-lines for barrier removal, the parties shall resolve such disputes through the third-party Facilitator, in accordance with ¶ 34.
  - i. Removal of high-priority barriers shall be completed within five years of the effective date of this Agreement, provided that Kaiser shall make a good faith effort to remove barriers on a consistent basis throughout the period allowed herein for barrier removal.
  - j. Within seven years of the effective date of this Agreement, Kaiser will complete the removal of all barriers slated for removal in a California-wide barrier removal plan developed by the parties in accordance with ¶ 6(g).
7. Kaiser will ensure that all new construction and alterations affecting usability of Kaiser facilities comply with federal and state disability access codes, including ADAAG and Title 24.
8. Kaiser will create a system to ensure that access features are properly maintained on an ongoing basis. This system will include a mechanism for responding promptly to complaints about access problems.

#### **IV. ACCESSIBLE MEDICAL EQUIPMENT**

9. The parties will work together to make a good faith effort to identify a mutually agreeable "Accessible Medical Equipment Specialist(s)," who will be retained by Kaiser to oversee a systemwide evaluation of Kaiser facilities in California ("California-wide") to determine what accessible medical equipment is needed and can and should be obtained for each Kaiser hospital and medical office building to ensure that people with

disabilities have full and equal access to all health services, including, but not limited to, screening and diagnostic procedures. The Accessible Medical Equipment Specialist(s) will work with Kaiser's Patient Handling Equipment Work Group to document Kaiser's inventory of accessible and inaccessible medical equipment and identify Kaiser's accessible-medical-equipment needs. The Accessible Medical Equipment Specialist(s) will complete interim reports and a final report of findings and recommendations, including cost estimates and a prioritized time-line for installing adequate accessible medical equipment in each Kaiser hospital and medical office building. Based on these reports, the parties will develop a reasonable action plan and time-line to ensure that each Kaiser hospital and medical office building has the accessible medical equipment needed to provide full and equal health-care access for people with disabilities. Priority will be placed on timely and orderly procurement and installation of the "high-priority" accessible medical equipment that is most important for delivering health services to people with disabilities. Any and all Accessible Medical Equipment Specialist(s) shall meet with the approval of both Kaiser and Plaintiffs, provided such approval is not unreasonably withheld. In the event that the parties are unable to identify a specialist(s) with the appropriate expertise in medical equipment (or a category of medical equipment) that is accessible to people with disabilities, or in the event of the parties' mutual agreement, the parties will instead jointly select individuals who will comprise an "Accessible Medical Equipment Work Group" that will serve the same functions as would an Accessible Medical Equipment Specialist. If the parties so agree, reliance on the outside consultant(s) (i.e., the Accessible Medical Equipment Specialist(s)) and the Work Group need not be mutually exclusive and the parties may adopt an approach that employs both the Work Group and third-party consultant(s) if and when it is appropriate to do so.

- a. Members of the Accessible Medical Equipment Work Group may include Kaiser employees and members and other individuals with appropriate background, experience, and knowledge regarding the medical equipment needs of and solutions for people with disabilities. People with mobility disabilities shall be included among the members of the Accessible Medical Equipment Work Group.
- b. The members of the Accessible Medical Equipment Work Group shall designate a chairperson who will be responsible for overseeing and coordinating the work of the Accessible Medical Equipment Work Group and for reporting to the third-party Facilitator and Plaintiffs' Counsel.
- d. The Accessible Medical Equipment Work Group shall work in cooperation with the Program Manager and/or Access Coordinator (or Coordinating Committee), Kaiser's Patient Handling Equipment Work Group and any relevant third-party consultants retained by Kaiser.
- e. The Accessible Medical Equipment Work Group shall report directly to Kaiser's Executive Sponsors Oversight Team.
- f. Kaiser shall ensure that the Accessible Medical Equipment Work Group has

sufficient resources to fulfill its mandate. Kaiser shall bear the costs and expenses of the Work Group.

10. The Accessible Medical Equipment Specialist(s) (or Work Group) will begin with a survey of a representative sampling at the two model facilities of Kaiser members with disabilities and health care providers to identify the difficulties disabled patients encounter with inaccessible medical equipment and related procedures and how those access problems affect the delivery and receipt of comprehensive health care services. This survey shall be commenced within sixty (60) days of the execution of this Agreement. The findings of the member/provider survey may inform the design and implementation of a comprehensive physical survey/inventory of the two model facilities and a report of findings and recommendations regarding the model facilities, in accordance with ¶ 9. This survey/inventory shall begin within 150 days of the execution of this Agreement, and will be completed within sixty (60) days. The report of the Accessible Medical Equipment Specialist(s) (or Work Group) regarding the model facilities, including recommendations and suggested time-lines for purchasing and installing accessible medical equipment, shall be completed within ninety (90) days of the completion of the survey/inventory. Upon its completion, this report shall be provided to Plaintiffs' counsel and the third-party Facilitator but shall otherwise remain confidential. Based on the report and recommendations of the Accessible Medical Equipment Specialist(s) (or Work Group), within sixty (60) days of its receipt, the parties will develop a reasonable action plan and time-line to remedy the barriers identified at the model facilities. High-priority accessible medical equipment will be installed at the model facilities within eighteen (18) months of the effective date of this Agreement.
11. Based on the survey of members with disabilities and providers, the survey/inventory of the model facilities, a review of the work already done by Kaiser to identify and respond to accessible-medical-equipment needs, and an objective assessment of Kaiser's internal capacity to survey/inventory its facilities, the parties, in consultation with the Accessible Medical Equipment Specialist(s) (or Work Group), will develop a plan to survey/inventory the remaining Kaiser health care facilities in California. This plan will allow for appropriate participation of the Kaiser Patient Handling Equipment Work Group and may include reliance on survey/inventory work performed by Kaiser personnel who have been trained by the Accessible Medical Equipment Specialist(s) (or Work Group). Kaiser will cooperate in good faith in conducting such surveys/inventories. The Accessible Medical Equipment Specialist(s) (or Work Group) shall oversee the survey/inventory process to ensure its accuracy. Development of the plan for the California-wide survey/inventory will be completed within sixty (60) days of the completion of the report regarding accessible medical equipment at the model facilities. Upon its completion, the plan shall be provided to the third-party Facilitator.
12. Implementation of the plan for a systemwide survey/inventory of Kaiser facilities in California may proceed on a service area basis, provided that top priority will be placed on surveying Kaiser facilities in Oakland, Hayward, Fontana, and Vallejo to identify accessible-medical-equipment needs and procure and install accessible medical equipment in those facilities.

13. During the course of the California-wide survey/inventory, Kaiser (in consultation and coordination with the Accessible Medical Equipment Specialist(s) or (Work Group)) will produce interim reports every ninety (90) days. These reports will include recommendations for procuring and installing high-priority accessible medical equipment. These interim reports shall be provided to Plaintiffs' Counsel and the third-party Facilitator, but shall otherwise remain confidential.
14. Kaiser will make a good faith effort to procure and install high-priority accessible medical equipment before the completion of the California-wide survey/inventory and final report. Quarterly interim reports will document the identification and response to accessible-medical-equipment needs completed within the 90-day period covered by each report and efforts slated for the coming quarter. These interim reports shall be provided to Plaintiffs' Counsel and the third-party Facilitator, but shall otherwise remain confidential.
15. The California-wide medical equipment survey/inventory will be completed within two years of the effective date of this Agreement. A final report identifying barriers and making recommendations for barrier removal shall be completed with ninety (90) days of the completion of the California-wide survey/inventory.
16. Within sixty (60) days of receiving the final report regarding accessible medical equipment needs, the parties will develop a reasonable action plan and time-line for the procurement and installation of accessible medical equipment. This plan and time-line shall be provided to the third-party Facilitator.
17. If disputes arise in developing the action plans and time-lines for procurement and installation of accessible medical equipment, the parties shall resolve such disputes through the third-party Facilitator, in accordance with ¶ 34.
18. Procurement and installation of high-priority accessible medical equipment in Kaiser facilities throughout California shall be completed within three years of the effective date of this Agreement, provided that Kaiser shall make a good faith effort to improve the availability of accessible medical equipment on a consistent basis throughout the period allowed herein for improving access to medical equipment.
19. Procurement and installation of all accessible medical equipment required by the plan developed by the parties in accordance with ¶ 16 shall be completed by Kaiser within five years of the effective date of this Agreement.
20. With the assistance of the Accessible Medical Equipment Specialist(s) (or Work Group), Kaiser will develop and implement a training program to educate Kaiser staff about the availability and proper use of accessible medical equipment, including guidance on proper lifting and transferring techniques. Kaiser will ensure that it provides its members with accurate information about accessible medical equipment so they will be aware of its availability and will know they do not need to bring attendants to their Kaiser medical appointments.

21. Kaiser will continue to maintain current information about accessible medical equipment so it will be able to upgrade its equipment as advancements in access are made.

#### **V. IMPROVED POLICIES, PROCEDURES, AND PROGRAMS AFFECTING ACCESS**

22. The parties will work together to make a good faith effort to identify a mutually agreeable expert or experts, referred to herein as “Access Policy Consultant(s),” who will be retained by Kaiser to provide consultation regarding policies, procedures, and programs that can improve access to quality health care for people with disabilities. Any and all expert(s) shall meet with the approval of both Kaiser and Plaintiffs, provided such approval is not unreasonably withheld. In the event that the parties are unable to identify a consultant with the appropriate expertise in a particular access-related area or areas, or in the event of the parties’ mutual agreement, the parties will instead jointly select individuals who will comprise an “Access Policy Work Group” that will serve the same functions as would an Access Policy Consultant. The Access Policy Consultant(s) and/or Access Policy Work Group shall be put in place within ninety (90) days of the effective date of this Agreement. If the parties so agree, reliance on the outside consultant(s) (i.e., the Access Policy Consultant(s)) and the Work Group need not be mutually exclusive and the parties may adopt an approach that employs both the Work Group and third-party consultant(s) if and when it is appropriate to do so.
  - a. Members of the Access Policy Work Group may include Kaiser employees and members and other individuals with appropriate background, experience, and knowledge regarding health access issues for people with disabilities. The Access Policy Work Group members shall include, to the maximum extent possible, people with disabilities. Before making any decision regarding a policy, procedure, or program with a direct effect on a subclass of people with disabilities (such as persons with hearing disabilities, persons with vision disabilities, persons with developmental disabilities, or those with mobility disabilities) the Access Policy Work Group will first consult with individuals who are members or representatives of that subclass.
  - b. The members of the Access Policy Work Group shall designate a chair who will be responsible for overseeing and coordinating the work of the Access Policy Work Group and for reporting to the third-party Facilitator and Plaintiffs’ Counsel.
  - c. During the first two years following the effective date of this Agreement, the Access Policy Work Group shall submit, to the third-party Facilitator and Plaintiffs’ Counsel, written reports every ninety (90) days, documenting the Group’s examination of policies, procedures, and programs affecting the access of people with disabilities to Kaiser health services and recommending improvements for those policies, procedures, and programs. Thereafter, these reports shall be submitted to the third-party Facilitator and Plaintiffs’ Counsel

every six months.

- d. The Access Policy Work Group shall work in cooperation with the Program Manager and/or Access Coordinator (or Coordinating Committee), Kaiser's Clinical Protocol Work Group and Kaiser's Education & Training Work Group and any relevant third-party consultants retained by Kaiser.
  - e. The Access Policy Work Group shall report directly to Kaiser's ADA Advisory Committee.
  - f. Kaiser shall ensure that the Access Policy Work Group has sufficient resources to fulfill its mandate. Kaiser shall bear the costs and expenses of the Work Group.
23. With the assistance of the parties, the Access Policy Consultant(s) and/or the Access Policy Work Group will review any and all Kaiser policies and procedures (or the absence thereof) that may tend to discriminate against people with disabilities, lead to their segregation, and/or impede their full and equal access to comprehensive health services and, where appropriate, will recommend reasonable modifications that Kaiser will adopt and implement to improve access for people with disabilities. With respect to the model facilities, this review, recommendation, and implementation process shall be completed within one year from the effective date of this Agreement. The review, recommendation, and implementation process for all Kaiser facilities in California shall be completed within three years from the effective date of this Agreement.
24. Plaintiffs have raised issues concerning Kaiser's policies and procedures for the procurement and maintenance and repair of durable medical equipment for members with disabilities. The parties have determined that they need additional time to address these issues. Accordingly, the parties agree to use their best efforts and to proceed in good faith to address these issues and arrive at a future agreement resolving them. In the event that such an agreement is not reached, the release provided in Paragraphs 41 -42 shall not apply to plaintiff's claims relating to durable medical equipment.
25. With the assistance of the parties, the Access Policy Consultant(s) and/or the Access Policy Work Group will review Kaiser's policies and procedures (or the absence thereof) for addressing the communication needs of people with vision, speech, hearing, and cognitive disabilities and, where appropriate, will recommend reasonable modifications that Kaiser will adopt and implement. With respect to the model facilities, this review, recommendation, and implementation process shall be completed within one year from the effective date of this Agreement. The review, recommendation, and implementation process for all Kaiser facilities in California shall be completed within three years from the effective date of this Agreement.
26. Kaiser will in good faith assess its existing system to inform patients when they are due for certain health services, particularly those aimed at prevention and early detection of illnesses and other health problems. With the assistance of the Access Policy Consultant(s) and/or the Access Policy Work Group and in consultation with Plaintiffs'

Counsel, Kaiser will in good faith then assess whether such as system should be modified to ensure more effective communication of this information to members with disabilities. This assessment and the implementation of any appropriate modifications will be completed as soon as reasonably possible and in no event later than three years from the effective date of this Agreement.

27. With the assistance of the Permanente Medical Groups in Northern and Southern California and, to the extent determined appropriate by the parties, jointly-selected consultants with appropriate expertise, and with input from Plaintiffs' Counsel, Kaiser will develop a training program to educate its health care professionals about treating people with disabilities. The goals of this training will include helping providers become more sensitive to the needs of people with disabilities and informing providers about disability-specific issues that arise in delivering health services to this community. This training will comprehensively address the range of issues that relate to the delivery of health services for people with disabilities; training curriculum topics may include: (i) dealing with disability in the health care profession, (ii) the culture of people with disabilities, (iii) treating disabilities in connection with broader health concerns, (iv) the relationship between disabilities and standards of care and treatment protocols, (v) problems with the medical model of disability, (vi) access needs and legal responsibilities, (vii) health care concerns of women with disabilities, including reproductive health care, pregnancy, rape, and abuse, and (viii) advancements in adaptive technology for people with disabilities. This training program will be developed and implemented within two years of the effective date of this Agreement.
  - a. If it is not possible to make the training mandatory, Kaiser will strongly advise its health care providers to participate in the training. To encourage this participation, Kaiser will make its best effort to enable its doctors to earn Continuing Medical Education credits for participating in the training.
28. In conjunction with the development of the training curriculum for health care providers, Kaiser will develop a handbook dealing with the delivery of accessible health services for people with disabilities. Kaiser will provide this handbook to all its health care providers. This handbook will be developed and distributed within three years of the effective date of this Agreement. In addition, plaintiffs will develop a handbook dealing with the delivery of accessible health services for people with disabilities and their families (*Disability consumer Guidebook*). Kaiser agrees to make reasonable and good faith efforts to assist in distributing the *Disability Consumer Guidebook* to its members with disabilities. Kaiser is not obligated to pay any costs for this purpose.
29. At the appropriate times, Kaiser's California Division President and Medical Directors will circulate memoranda to all Kaiser employees, reiterating Kaiser's commitment to providing equal access for people with disabilities and explaining any new policies and procedures and access features that will effectuate that goal.
30. The Permanente Medical Groups will in good faith consider whether it is appropriate to implement specialized clinical programs in disability care. The exploration of the

propriety of developing such a specialization will include consideration of the standards of care for people with disabilities and how care can be better delivered and managed to achieve improved health for people with disabilities. In the event that Kaiser, with input from the disability community, decides it is appropriate to develop disability clinics (akin to clinics for women's health care or geriatric care) at certain Kaiser medical centers, such clinics shall supplement, not substitute for, the provision of comprehensive, accessible health services in a fully integrated setting. The decision whether to develop some form(s) of specialization in care for people with disabilities shall be vested with the Permanente Medical Groups, as this determination involves questions regarding the practice of medicine.

31. If and when the parties make a good-faith determination that it is appropriate (for example, as improved access features and policies are integrated into Kaiser's facilities and health care programs), Kaiser will conduct outreach to members with disabilities to inform them of improved access features, policies, and programs and other pertinent information that may help improve access to regular and comprehensive health care. In addition, Kaiser may of its own accord determine that such outreach is appropriate. This outreach may include the distribution of written materials (with alternative formats) regarding the health-care-access needs and rights of people with disabilities. Plaintiffs' Counsel shall cooperate with Kaiser to ensure the efficacy of outreach efforts and shall participate in the development of outreach and education materials.
32. The parties, with the assistance of the specialists and consultants provided for herein, will identify steps that Kaiser shall take to improve access pending full implementation of the access plan. These interim steps may include, for example, providing care at nearby Kaiser medical facilities that have accessible medical equipment when a member's local Kaiser facility does not have such equipment. In the event no Kaiser facility has accessible medical equipment medically necessary for the member's care, Kaiser will pay for care provided at a non-Kaiser facility when a patient is referred by a Permanente Medical Group physician.

## **VI. REPORTING AND MONITORING**

33. Kaiser shall provide written reports on a quarterly basis to Plaintiffs' Counsel and the third-party Facilitator regarding work performed to implement this Agreement. The first such report shall be due ninety (90) days after the effective date of this Agreement. The reports shall detail (a) what steps Kaiser has taken to comply with the Agreement since the last report, (b) whether Kaiser has met the deadlines for implementation set forth in this Agreement, and if not, the extent to which such work has been completed and an explanation for any gaps, (c) what problems, if any, Kaiser has encountered in complying with the Agreement, (d) what if anything Kaiser plans to do to remedy these problems, and (e) any complaints and any responses to such complaints Kaiser has received regarding access for people with disabilities. The reports shall include information regarding the evaluation and modification of Kaiser policies, procedures, and programs, as provided for in Section V of this Agreement.

- a. The reports submitted in accordance with ¶ 23 are in addition to the subject-specific reports required by this Agreement, such as those pertaining to the identification and removal of architectural barriers (see ¶¶ 6-8, inclusive), those pertaining to the identification of and response to accessible-medical-equipment needs (see ¶¶ 9-21, inclusive), and those pertaining to policies, procedures and programs affecting people with disabilities (see ¶¶ 22-32, inclusive). Instead of submitting multiple quarterly reports, however, Kaiser, if it wishes to do so, may submit single quarterly reports that include all the information required by this Agreement, provided, however, that any reports by the Architectural Access Specialist, Accessible Medical Equipment Specialist(s) (or Work Group), Access Policy Consultant(s) or Access Policy Work Group shall be presented separately.
34. A neutral third-party Facilitator shall be appointed jointly by the parties to monitor compliance with this Agreement. Subject to an annual cap of \$15,000, Kaiser shall pay for the time and costs of the third-party Facilitator. The third-party Facilitator shall have the powers to obtain from either party any non-privileged documents or information relevant to implementation of this Agreement, and to serve as a mediator if disputes arise between the parties in formulating plans and time-lines for the removal of architectural barriers and/or the procurement and installation of accessible medical equipment in Kaiser facilities in California. In the event that this mediation does not enable the parties to resolve such a dispute, the Facilitator may issue a binding decision resolving the dispute, provided that disputes other than those pertaining specifically to the formulation of plans and time-lines for the removal of architectural barriers or the procurement and installation of accessible medical equipment shall be resolved in accordance with the dispute resolutions set forth in ¶ 37.
35. If the person initially selected becomes unavailable to serve as the third-party Facilitator, the parties will agree to appoint a substitute person to act as the third-party Facilitator. If the parties cannot agree on a substitute person, the parties will submit the matter of whom to appoint as a substitute third-party Facilitator for arbitration in accordance with ¶ 37(c).
36. Kaiser shall designate a point person responsible for collecting information concerning compliance with this Agreement, producing the quarterly reports referenced in ¶ 33 above, and producing any information requested by the Facilitator. This point person shall report directly to, and have direct access to, the Access Coordinator. Kaiser shall ensure that the point person has sufficient resources to collect all necessary information. Kaiser shall bear all costs and expenses of this point person. The Access Coordinator (or the chairperson of the Access Coordinating Committee), provided for in ¶ 1, may serve as this point person.

## **VII. DISPUTE RESOLUTION**

37. The parties hereto agree that any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof shall be settled in the following manner:

- a. First, either party claiming that a violation has occurred under this Agreement will give notice of the claim in writing to opposing counsel and will propose a resolution of the issue to the other party.
- b. Second, within ten (10) days of the written claim of violation, the parties shall meet and confer to attempt in good faith, through informal negotiations, to resolve the dispute or controversy.
- c. Third, if the meet-and-confer step fails to produce a resolution, the parties shall submit the dispute for arbitration by JAMS Endispute (the "Arbitrator"). The Arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the Arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.
  - i. The Arbitrator shall apply California law to the merits of any dispute or claim, without reference to conflict-of-law rules. The arbitration proceedings shall be governed by federal arbitration law, without reference to state arbitration law. The parties hereto hereby expressly consent to the personal jurisdiction of the state and federal courts located in California for any action or proceeding arising from or relating to this Agreement and/or relating to any arbitration in which the parties are participants.
  - ii. The parties initially shall each advance one half of the costs and expenses of the Arbitrator, and each party will bear responsibility for its own attorneys' fees and its other costs and expenses. Thereafter, the Arbitrator may, in accordance with applicable law, award reasonable attorneys' fees, costs, and expenses to the prevailing party.

## **VIII. FINANCIAL ISSUES AND FEES AND COSTS**

[REDACTED]

## **IX. RELEASES**

41. In consideration for the promises made above, Plaintiffs, for themselves and for each of their respective representatives, heirs, successors and assigns, do hereby release, acquit and forever discharge Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals, and their parent companies, affiliates, subsidiaries, divisions and related companies, and the past, present and future employees, agents, attorneys, officers, directors, shareholders, partners, heirs, executors, administrators, insurers, successors and assigns of all of the foregoing (all hereinafter "Releasees"), from and against any and all claims, rights, demands, actions, obligations, liabilities and causes of action of any and every kind, nature and character whatsoever raised in *Metzler et al. v. Kaiser Foundation Health Plan, Inc. et al.*, Case No. 829265-2, against Releasees, or any of them, including

those arising from or in any way connected with or related to any claims of discrimination or denial of access, including any claims arising under California Civil Code §§ 51, *et seq.*, 54, *et seq.*, and 3345, California Government Code §§ 11135, *et seq.*, and the regulations promulgated thereunder, and Section 17200 of the California Business and Professions Code.

42. Except as otherwise provided by law, Plaintiffs agrees that they will not, on behalf of themselves, or in cooperation or participation with any other person, firm, entity, corporation, institute, or government agency, file, refile, or in any manner participate in or prosecute any claim, charge, grievance, complaint or action of any sort, before any local, state or federal court, arbitrator, or administrative agency, board or tribunal concerning any matter which was raised in connection with any matter released in ¶ 31 above. Plaintiffs further agree to dismiss promptly or withdraw with prejudice *Metzler et al. v. Kaiser Foundation Health Plan, Inc. et al.*, Case No. 829265-2, except that the Court shall retain jurisdiction to enforce the Agreement and the Dispute Resolution provisions

#### **X. TERM OF THE AGREEMENT**

43. The effective date of this Agreement is the date on which all parties have signed the Agreement.
44. Although Kaiser will continue to comply in good faith with federal and California access laws, this Agreement will terminate on the later of [seven (7) years and one day] after its effective date or the date upon which Kaiser completes its obligations under the Agreement.

#### **XI. GENERAL & MISCELLANEOUS PROVISIONS**

45. The parties will hold a joint news conference to announce the settlement to the public. The parties will jointly prepare and disseminate a media release recognizing the efforts of Kaiser to take a leadership role in providing accessible health care to people with disabilities.
46. Kaiser and Plaintiffs' Counsel will work cooperatively and collaboratively to submit grant proposals seeking funds to support the development and implementation of the Access Plan so that Kaiser can establish a model program for meeting the health needs of people with disabilities. Regardless of whether these fundraising efforts are successful, Kaiser shall bear the financial responsibility for fulfilling its obligations under this Agreement.
47. This Agreement shall be governed by the laws of the State of California.
48. This Agreement may be signed in duplicate originals.

49. Heading and sub-headings in this Agreement are used solely for convenience. Examples provided in this Agreement are intended to be illustrative, not exhaustive.
50. If a dispute arises because a party claims that unforeseen circumstances make this Settlement Agreement, or any part of it, unjust, any party may seek modification of the Agreement. Any such modification should take into account (i) the purposes of this Agreement, as described in its Recitals, (ii) the circumstances that allegedly make the provision(s) unjust, including whether the modification-seeking party has acted in good faith, and (iii) whether the proposed modification is suitably tailored to the changed circumstances. Disputes regarding the propriety of a modification shall be resolved in accordance with the dispute resolution provisions set forth in ¶ 37.
  - a. If it becomes impracticable for either party to meet a deadline established by this Agreement, the parties may modify the Agreement's time-lines in accordance with ¶ 50, provided that the party seeking an extension has made a good faith effort to meet the relevant deadline.
51. This Agreement is the compromise of disputed claims and shall not be deemed to be an admission of liability or wrongdoing by any party for any purpose.
52. This Agreement is binding on and for the benefit of Plaintiffs and Plaintiffs' Counsel, and Releasees and their respective heirs, executors, administrators, successors and assigns, wherever the context requires or admits.
53. If any provision or portion of this Agreement shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of such provision in any other circumstances, or the validity or enforceability of this Agreement.
54. Breach of any term(s) of this Agreement by one or more defendant(s) does not invalidate the Agreement as to any or all of the remaining, non-breaching defendants. Breach of this Agreement by one defendant does not constitute a breach by all defendants.
55. This instrument contains the entire agreement of the parties with regard to matters covered in it, and supersedes any prior agreements as to those matters. This Agreement may not be changed or modified, in whole or in part, except by an instrument in writing signed by Plaintiffs, Plaintiffs' Counsel, and an Officer of Kaiser.
56. The parties declare that prior to the execution of this Agreement, they apprised themselves of sufficient relevant information, through sources of their own selection, in order that they might intelligently exercise their own judgment in deciding whether to execute it, and in deciding on the contents hereof. The parties further declare that their respective decisions are not predicated on or influenced by any declarations or representations of the plaintiff or persons or entities released or any predecessors in interest, successors, assigns, officers, directors, employees, attorneys, or agents of said entities other than as may be contained in this instrument.

57. The parties expressly state that they have read this Agreement and understand all of its terms, that the preceding paragraphs recite the sole consideration for this Agreement and that all agreements and understandings between the parties are embodied and expressed herein. This Agreement is executed voluntarily and with full knowledge of its significance.

Kaiser Foundation Health Plan, Inc.  
Kaiser Foundation Hospitals

Date: \_\_\_\_\_

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

All Plaintiffs

Date: \_\_\_\_\_

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