

ORIGINAL

AGREEMENT

MONTEREY COUNTY  
DEPARTMENT OF SOCIAL & EMPLOYMENT SERVICES

and

HEALTH PROJECTS CENTER

*MSSP Coordination of Care*

February 1, 2012 to June 30, 2013

## AGREEMENT

### I. DECLARATION

This agreement is entered into by and between the **MONTEREY COUNTY DEPARTMENT OF SOCIAL AND EMPLOYMENT SERVICES** hereinafter referred to as **DSES**, and **HEALTH PROJECTS CENTER**, hereinafter referred to as **HPC**, for the purpose of coordinating continuity of care for clients of the Multipurpose Senior Services Program (MSSP). The purpose of this agreement is to identify the roles and responsibilities of each of the parties.

### II. BACKGROUND

On June 30, 2011, DSES terminated its contract with the California Department of Aging to administer the Multipurpose Senior Services Program for Monterey County. Health Projects Center of Santa Cruz has been selected by the California Department of Aging to administer the Multipurpose Senior Services Program in Monterey County beginning February 1, 2012.

DSES and HPC share the following objectives for clients of the Multipurpose Senior Services Program in Monterey County:

1. Provide high quality social and health care management for frail elderly clients who are certifiable for placement in a nursing facility, but who wish to remain in the community;
2. Meet legal requirements and answer potential future requests for information about services provided through DSES;
3. Assist in the enrollment of DSES' former MSSP clients as priority into the HPC program.

### III. SCOPE OF SERVICES

Health Projects Center agrees to:

1. Provide employees, vendor contracts, and internal systems to administer the services to current MSSP clients in accordance with direction from the California Department of Aging, and in compliance with the State MSSP Contract;
2. Maintain confidentiality of protected health information and documentation for MSSP clients in accordance with direction from the California Department of Aging, and in compliance with the State MSSP Contract;
3. Take timely referrals for high-risk, frail elders referred for MSSP care management by DSES and IHSS and enroll these individuals into the program according to the HPC referral and waitlist policy, and CDA regulations;
4. For a period of one (1) year from the expiration of this Agreement, provide information and relevant documents to DSES, upon request, to enable DSES to respond to program or legal

inquiries, or conduct reconciliation or audits for the years that DSES administered the MSSP program.

The Department of Social and Employment Services (DSES) agrees to:

1. Provide general orientation to HPC MSSP and share locally developed care management tools, vendor information, and procedures;
2. Provide case records of former MSSP clients to HPC in accordance with direction from the California Department of Aging and the MSSP State Agreement;
3. Facilitate efficient access, based on available staffing resources, to partner programs In-Home Support Services (IHSS), MediCal, and Adult Protective Services (APS);
4. Provide annual IHSS assessment information to HPC for each active MSSP client upon request by HPC for clients who are newly enrolled in MSSP, and on an annual basis at the time of reassessment for ongoing participants.

#### IV. GENERAL PROVISIONS

##### A. INDMENIFICATION

HPC shall indemnify, defend, and hold harmless COUNTY, its officers, agents and employees from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury or death arising out of or connected with HPC's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of COUNTY. HPC's "performance" includes HPC's action or inaction, and the action or inaction of HPC's officers, employees, agents and subcontractors.

##### B. INSURANCE PROVISIONS

**Insurance Coverage Requirements:** Without limiting HPC's duty to indemnify, HPC shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

**Commercial General Liability**, including but not limited to premises, personal injuries, products, and completed operations, with a combined single limit of not less than \$1,000,000.00 (one million dollars) per occurrence; and

**Comprehensive Automobile Liability** covering all motor vehicles, including owned, leased, non-owned and hired vehicles, used in providing services under this Agreement, with a combined single limit of not less than \$1,000,000.00 (one million dollars) per occurrence; and

**Worker's Compensation Insurance:** If HPC employs others in the performance of this Agreement, HPC shall maintain Worker's Compensation Insurance in accordance with California Labor Code Section 3700, and with a minimum of \$1,000,000.00 (one million dollars) per occurrence for employer's liability.

**Professional Liability Insurance:** HPC shall maintain in effect throughout the term of this Agreement Professional Liability Insurance in the amount of not less than \$1,000,000 (one million dollars) per claim, and \$2,000,000 (two million dollars) in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If Professional Liability Insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of this Agreement.

**General Insurance Requirements:** All insurance required by this Agreement shall be with a company acceptable to COUNTY and authorized by law to transact insurance business in the State of California. Unless otherwise specified in this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date HPC completes its performance of services under this Agreement. Each policy shall provide identical coverage for each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance showing each subcontractor has identical insurance coverage.

Comprehensive General Liability and Automobile Liability policies shall provide an endorsement naming the COUNTY of Monterey, its officers, agents, and employees as Additional Insureds, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the COUNTY, and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the HPC's insurance.

Prior to the execution of this Agreement by COUNTY, HPC shall file Certificates of Insurance with COUNTY's Contract Administrator, showing that HPC has in effect the insurance required by this Agreement. HPC shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy, which would alter the information of the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

In the event HPC is lawfully self-insured in any or all of the required insurance areas referenced above, a letter certifying those areas of coverage and in the minimum amounts as set forth in this Agreement, shall be furnished by HPC to COUNTY's Contract Administrator prior to the execution of this Agreement.

**Cancellation of Insurance:** Each liability policy shall provide that COUNTY will be given notice in writing at least thirty (30) days in advance of any change, cancellation, or non-renewal thereof. HPC shall immediately obtain replacement coverage for any insurance policy that is terminated, cancelled, non-renewed, or whose policy limits have been exhausted, or upon insolvency of the insurer that issued the policy.

## C. CONFIDENTIALITY AND RECORDS

**Confidentiality:** HEALTH PROJECTS CENTER and its officers, employees, agents, and subcontractors shall comply with Welfare and Institutions Code Sec. 10850, 45 CFR Sec. 205.50, and all other applicable provisions of law which provide for the confidentiality of records and prohibit their being opened for examination for any purpose not directly connected with the administration of public social services. Whether or not covered by W&I Code Sec. 10850 or by 45 CFR Sec. 205.50, confidential medical or personnel records and the identities of clients and complainants shall not be disclosed unless there is proper consent to such disclosure or a court order requiring disclosure. Confidential information gained by HEALTH PROJECTS CENTER from access to any such records, and from contact with its clients and complainants, shall be used by HEALTH PROJECTS CENTER only in connection with its conduct of the program under this contract. COUNTY, through the Director of the Department of Social & Employment Services, shall have access to such confidential information and records to the extent allowed by law, and such information and records in the hands of COUNTY shall remain confidential and may be disclosed only as permitted by law.

**Maintenance and Availability of Records:** HEALTH PROJECTS CENTER shall prepare and maintain all reports and records that may be required by federal, state or COUNTY rules and regulations, and shall furnish such reports and records to COUNTY, and to the state and federal governments, upon request.

**Retention of Records:** HEALTH PROJECTS CENTER shall maintain and preserve all records related to this Agreement (and shall assure the maintenance of such records in the possession of any third party performing work related to this Agreement) for a period of five (5) years from the expiration of this Agreement. Such records shall be retained beyond the five-year period until any pending litigation, claim, negotiation, audit exception, or other action involving this Agreement is resolved.

## D. TERM

This Agreement shall commence effective 02/01/12 and remain in full force and effect through 06/30/13, unless sooner terminated as provided herein. Either party may terminate this agreement by giving thirty (30) days' written notice to the other party. This Agreement may be renewed or renegotiated upon mutual written consent of all parties.

## E. FISCAL

There are no fiscal impacts to the Department of Social and Employment Services associated with this M.O.U.

## F. EXHIBITS

The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement: Exhibit A-HIPAA Business Associate Agreement

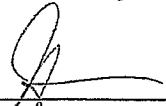
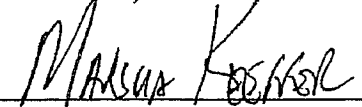
V. NOTICE

Notice to the parties in connection with this agreement shall be given personally or by regular mail addressed as follows:

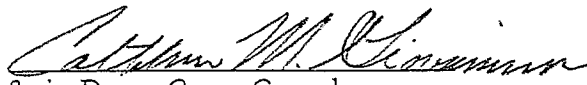
Elliott C. Robinson  
Director  
Department of Social and Employment Services  
1000 South Main Street, Suite 301  
Salinas, CA 93901-2353

John Beletz  
Executive Director  
Health Projects Center  
1537 Pacific Avenue, Suite 300  
Santa Cruz, CA 95060

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first herein above written.

BY	_____	_____
	Elliott Robinson, DSES Director	Date
BY	 _____	<u>10/9/12</u> _____
	John Beletz, Executive Director Health Projects Center	Date
BY	 _____	<u>11/6/12</u> _____
	(2 <sup>nd</sup> HPC Authorized Signature)	Date

APPROVED AS TO FORM:

  
Senior Deputy County Counsel  
November 21, 2012  
Date

## BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective the 1<sup>st</sup> day of February, 2012, by and between **MONTEREY COUNTY**, hereinafter referred to as "Covered Entity", and **HEALTH PROJECTS CENTER**, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule (the agreement evidencing such arrangement is entitled **agreement to transition the Coordination of Care for the Multi-purpose Senior Services Program (MSSP)**, dated **February 1, 2012**, and is hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of both Parties.

### I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

## EXHIBIT A

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

### II. CONFIDENTIALITY REQUIREMENTS

(a) Business Associate agrees:

(i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Privacy Rule), or the HIPAA Privacy Rule, and (3) as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by Covered Entity;

(ii) at termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

(iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

(i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its



## EXHIBIT A

capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

### III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

### IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

### V. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder

**EXHIBIT A**

on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

**COVERED ENTITY:  
MONTEREY COUNTY**

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

Title: Director, DSES

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

**BUSINESS ASSOCIATE:  
HEALTH PROJECTS CENTER**

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

Title: Exec. Director

Date: 10/9/12