

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
COUNTY OF MONTEREY HEALTH DEPARTMENT,  
BEHAVIORAL HEALTH BUREAU  
AND  
MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT**

This Agreement is developed and entered into this **1st day of July, 2015**, by and between the County of Monterey, by and through the Monterey County Health Department, Behavioral Health Bureau (hereinafter the "County") and Monterey Peninsula Unified School District, (hereinafter referred to as "Collaborator") for the purpose of enumerating the terms and conditions between the County and Collaborator as provided below.

**RECITALS**

- A. The County is the recipient of a First 5 grant to implement the Secure Families Program. The purpose of the Secure Families Program is to improve the ability of families, schools and communities to prepare children age 0-5 to enter school ready to succeed.
- B. The local Secure Families Program will provide mental health services to infant, toddler and pre-school age children and mental health consultation to Cabrillo Family Resource Center personnel who work with children 0-5 using the Monterey Peninsula Unified School District Cabrillo Family Resource Center (hereinafter referred to as "MPUSD") as a venue for providing community-based and integrated services.
- C. The Secure Families Program has, as its core value, the provision of culturally and linguistically appropriate behavioral health services geared toward providing children ages 0-5 and the family with necessary resources required to support positive physical, emotional and cognitive development.

**1. Term of MOU:**

This MOU shall be in full force commencing **July 1, 2015 and ending June 30, 2016**, unless terminated or amended pursuant to the MOU.

**2. Exhibits**

The following attached exhibits are incorporated herein by reference and constitute a part of this Memorandum of Understanding:

EXHIBIT A:	DESCRIPTION OF SERVICES
EXHIBIT B	CONFIDENTIALITY OF PATIENT INFORMATION
EXHIBIT C:	ASSURANCE OF COMPLIANCE WITH MONTEREY COUNTY CULTURAL COMPETENCY POLICY
EXHIBIT D:	BUSINESS ASSOCIATE AGREEMENT

**3. Personnel**

The County assumes full responsibility for the actions of staff while performing services pursuant to this MOU and shall be solely responsible for the supervision, daily directions, control and performance.

**4. Maintenance and confidentiality of patient information**

- A. The County shall maintain clinical records for each recipient of service in compliance with all state and federal requirements. Such records shall include a description of all services provided by the County in sufficient detail to make possible an evaluation of services, and all data necessary to prepare reports to the State, including treatment plans, records of client interviews, and progress notes. The County shall retain clinical records for a minimum of seven (7) years and, in the case of minors, for at least one (1) year after the minor has reached the age of majority, but for a period of no less than seven (7) years.
- B. Collaborator shall enforce all confidentiality rules and regulations and comply with the confidentiality requirements set forth in Exhibit B and incorporated by reference as if fully set forth herein.

**5. Modification**

This MOU may be modified or updated by mutual consent and only by an instrument in writing signed by the County and the Collaborator.

**6. Fiscal Terms**

This MOU does not contain any fiscal terms between the County and the Collaborator. The funding for the services of the County Psychiatric Social Worker (hereinafter referred to as "PSW") of the Secure Families Program at MPUSD is provided for by the County's First 5 grant, Medi-Cal billing and the Prevention and Early Intervention (PEI) funds under the Mental Health Services Act.

**7. Termination**

The services of the County PSW are contingent upon available funding. This Agreement may be terminated if funding is reduced or eliminated. Either party may terminate the MOU by giving written notice of termination to the other party at least thirty (30) days prior to termination.

**8. Assignment**

This MOU may not be assigned without the prior written consent of the County.

**9. General Provisions**

All work described herein shall be performed in accordance with applicable Federal, State and local laws and regulations.

There shall be no discrimination because of race, color, religion, sex, national origin, ancestry, age, marital status, sexual orientation, or disability.

Collaborator shall act as an independent Collaborator in the performance of the duties hereunder, and no officer, employee or agent of Collaborator employed under this MOU shall be deemed to be an officer, employee or agent of the County in carrying out the duties of this MOU. Nothing in this MOU shall create any of the rights, powers, privileges or immunities of an employee of the County.

Collaborator shall be solely liable for and obligated for all applicable expenses, including all applicable payroll and associated taxes, including but not limited to Federal and State income taxes and Social Security taxes, arising out of Collaborators performance of this MOU.

**10. Child Abuse Reporting Requirements**

It is recognized that both the County and the Collaborator are required by law to promptly report all known or suspected instances of child abuse or neglect to proper authorities.

**11. Meetings/Communication**

County and Collaborator shall continue to monitor implementation of this program through communication between the Children's Behavioral Health Services Manager at the Behavioral Health Bureau and/or the designated staff of the Behavioral Health Bureau and the Program Director at the MPUSD Cabrillo Family Resource Center and/or the designated staff of the MPUSD Cabrillo Family Resource Center, as necessary. The focus of the monitoring activity will be to review and evaluate operations to ensure that appropriate participants are receiving services. Other meetings shall be scheduled as needed to discuss other areas that affect either party in this MOU.

Further communication, as necessary, shall take place between designated staff from each party's entity.

**12. Mutual Indemnification**

- A. Collaborator shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this MOU by Collaborator and/or its agents, employees or Collaborators, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this MOU to provide the broadest possible coverage for the County. The Collaborator shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Collaborator is obligated to indemnify, defend and hold harmless the County under this MOU.
- B. County shall indemnify, defend, and hold harmless the Collaborator (hereinafter the "Collaborator"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this MOU by the County and/or its agents, employees or Collaborators, excepting only loss, injury

or damage caused by the negligence or willful misconduct of personnel employed by the Collaborator. It is the intent of the parties to this MOU to provide the broadest possible coverage for the Collaborator. The County shall reimburse the Collaborator for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless the Collaborator under this MOU.

### **13. Insurance**

#### **A. Evidence of Coverage:**

Prior to commencement of this MOU, the Collaborator shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Collaborator upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Collaborator shall not receive a "Notice to Proceed" with the work under this MOU until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Collaborator.

#### **B. Qualifying Insurers:**

All coverage's except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

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

Commercial general liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Collaborators Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this MOU, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Workers' Compensation Insurance, if Collaborator employs others in the performance of this MOU, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 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 Collaborator shall, upon the expiration or earlier termination of this MOU, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this MOU.

**D. Other Insurance Requirements:**

All insurance required by this MOU shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this MOU, 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 years following the date COLLABORATOR completes its performance of services under this MOU.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Collaborator and additional insureds with respect to claims arising from each sub Collaborator, if any, performing work under this MOU, or be accompanied by a certificate of insurance from each Collaborator showing each Collaborator has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the COLLABORATOR'S work, including ongoing and completed operations, 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 COLLABORATOR'S insurance.

Prior to the execution of this MOU by the County, Collaborator shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the Collaborator has in effect the insurance required by this MOU. The Collaborator shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this MOU, which shall continue in full force and effect.

Collaborator shall at all times during the term of this MOU maintain in force the insurance coverage required under this MOU and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify Collaborator and Collaborator shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Collaborator to maintain such insurance is a default of this MOU, which entitles County, at its sole discretion, to terminate this MOU immediately.

This MOU constitutes the entire MOU between the parties and supersedes all previous communications, representations or MOUs regarding this subject, whether written, or oral, between the parties.

Consent to the terms of this MOU is indicated by the authorized signatures affixed and dated on the following page.

The remaining of this page is left blank.

IN WITNESS WHEREOF, COUNTY and COLLABORATOR have executed this MOU as of the day and year written below.

**COUNTY OF MONTEREY**

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

Ray Bullick, Director of Health

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

10-6-15

**Approved as to Form**

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

Stacy L. Saetta, Deputy County Counsel

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

8/25/15

**Approved as to Fiscal Provisions**

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

Gary Giboney, Auditor-Controller

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

8-26-15

**Approved as to Liability Provisions**

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

Steven E. Mauck, Risk Management

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

8-27-15

**COLLABORATOR**

**MONTEREY PENINSULA UNIFIED  
SCHOOL DISTRICT**

\_\_\_\_\_  
Collaborator's Business Name

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

Signature

Daniel PK Diffenbaugh, Ed.L.D., Superintendent

\_\_\_\_\_  
Print Name and Title

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

6/17/2015

**EXHIBIT A:**  
**DESCRIPTION OF SERVICES**

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**I. IDENTIFICATION OF COLLABORATOR**

Dan Albert, Associate Superintendent  
District Business Services  
700 Pacific Street  
Monterey, CA 93940  
Tel: 831-645-1269  
Fax: 831-649-4175  
email: [dalbert@mpusd.k12.ca.us](mailto:dalbert@mpusd.k12.ca.us)

**II. ROLE OF COLLABORATOR:**

- a. Collaborator shall provide a dedicated and confidential office for one staff with access to space large enough to accommodate confidential play therapy, family therapy, and consultation with parents and teachers. The room shall be made available at times designated in a schedule of hours to be established by the Collaborator and the County. The office will be furnished with a desk, chairs, locking file cabinet, telephone and access to the internet. If the Collaborator is unable to provide these resources it will be the responsibility of the County to ensure adequate resources are available.
- b. The Collaborator shall identify and refer at-risk children in need of psycho-social follow-up to the Psychiatric Social Worker. The referring staff shall be responsible for informing the parent of the referral to mental health services.
- c. The Collaborator shall seek concurrent services according to Child Find regulations.

**III. ROLE OF COUNTY:**

- a. The County shall provide 1.0 FTE Psychiatric Social Worker (hereinafter the "Social Worker") to perform all services described in this MOU. The County will consult with the Collaborator to select a Social Worker that is best suited to work collaboratively with MPUSD staff, teachers and parents.
- b. The Social Worker will provide on-site mental health services and classroom observation and offer consultation to teachers during their contracted work hours.
- c. At the time of the assessment appointment with the parent, the Social Worker will explain and obtain parental signatures on all required County consents. The Social Worker shall be responsible for obtaining the necessary County consent and release of information forms to be shared with other agencies or professionals as needed or agreed to by the parties.

- d. Prior to conducting classroom observations, the Social Worker shall verify that parental consent has been obtained and is on file.
- e. The County shall monitor the status of Secure Families Program activities being conducted at the MPUSD Family Resource Center at Juan Cabrillo.
- f. The County shall work jointly with the Collaborator to clarify referral processes for children who are identified as needing further assessment or treatment. The County and the Collaborator will work together to coordinate treatment services to reduce potential duplication and develop streamlined processes to ensure systems collaboration.
- g. The County shall accommodate for concurrent referral services with Collaborator.
- h. The County shall retain all data related to the Program at the Monterey County Behavioral Health Bureau.
- i. The County shall report all data relating to Secure Families activities to First 5 Monterey County per the Agreement with First 5 Monterey County.
- j. The County staff will utilize the sign-in/sign-out procedures at the Family Resource Center and other applicable school sites.
- k. In the event of significant program changes in staff or procedures, the County shall notify the Collaborator's designated representative within five (5) school days.

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**EXHIBIT B:**  
**CONFIDENTIALITY OF PATIENT INFORMATION**

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Confidentiality of Patient Information and Records. All patient information and records are confidential. CONTRACTOR shall maintain the confidentiality of all patient records, including billings and computerized records, in accordance with all state and federal law relating to confidentiality of patient records and patient information, including but not limited to: Welfare and Institutions Code sections 5328, *et seq.*, 14100.2, and 10850, *et seq.*; Title 45 Code of Federal Regulations section 205.50, and Title 42, CFR, section 431.300 *et seq.*

"Patient information" or "confidential information" includes any patient/recipient of services identifying information including, but not limited to: name, identifying numbers, symbol, fingerprint, photograph or voice print. In addition, "patient information" or "confidential information" includes all information CONTRACTOR has obtained about a patient/recipient of services whether or not a documentary record of such information exists.


Use and Disclosure of Patient Information. Confidential information gained by CONTRACTOR from access to records and from contact with patients/recipients of service and complainants shall be used by CONTRACTOR only in connection with its performance under this Agreement. CONTRACTOR shall not disclose patient records or information, including the identities of patients/recipients of service, without proper consent to such disclosure or a court order requiring disclosure. In addition, CONTRACTOR shall obtain COUNTY's authorization to such disclosure prior to any release of confidential information. The COUNTY, through the Behavioral Health Director, shall have access to such confidential information.

Penalty for Unauthorized Disclosure. CONTRACTOR understands that disclosure of patient information in violation of law may subject the party releasing the information to a minimum of \$10,000 in civil damages, as set forth in Welfare and Institutions Code Section 5330.

Duty to Warn. CONTRACTOR understands that persons providing services under this Agreement may, in certain situations involving a patient or recipient of services who is a danger to himself or others, have a duty to warn third parties of such danger and should consult supervisory staff and/or legal counsel about such duty to warn as appropriate.

Dissemination of these Confidentiality Provisions. CONTRACTOR shall inform all its officers, employees, agents, and subcontractors providing services hereunder of these provisions.

*By my signature below, as the authorized representative of the COLLABORATOR named below, I certify acceptance and understanding for myself and the COLLABORATOR of the above confidentiality provisions.*



Signature of Authorized Representative

6/17/2015

Date

**MONTEREY PENINSULA UNIFIED  
SCHOOL DISTRICT**

Business Name of COLLABORATOR

Daniel PK Diffenbaugh, Ed.L.D.,

Name of Authorized Representative (printed)

Superintendent

Title of Authorized Representative

**EXHIBIT C:**  
**ASSURANCE OF COMPLIANCE WITH MONTEREY COUNTY'S CULTURAL**  
**COMPETENCY POLICY**

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In a culturally competent system, each provider organization shows respect for and responds to individual differences and special needs. Services are provided in the appropriate cultural context and without discrimination related to race, national origin, income level, religion, gender, sexual orientation, age, or physical disability, to name a few. Culturally competent caregivers are aware of the impact of their own culture on their relationships with consumers/families and know about and respect cultural and ethnic differences. They adapt their skills to meet each individual's/family's values and customs. Cultural competence is a developmental and dynamic process – one that occurs over time.

**Organizations in a Culturally Competent Service System Promote:**

**Quality Improvement**

- Continuous evaluation and quality improvement
- Supporting evidence-based, promising, community defined, and emerging practices that are congruent with ethnic/racial/linguistic group belief systems, cultural values and help-seeking behaviors.

**Collaboration**

- Collaborating with Behavioral Health and other community programs
- Resolving barriers to partnerships with other service providers

**Access**

- Providing new services to unserved and underserved children, youth, adults and/or older adults
- Reducing disparities in access to, and retention in, care as identified in the Mental Health Services Act Plan
- Ensuring representation of mental health services consumers, family members of a mental health services consumer, and/or representatives from unserved communities on their advisory/governance body or committee for development of service delivery and evaluation (with a minimum target of 40%).
- Developing recruitment, hiring, and retention plans that are reflective of the population focus, communities' ethnic, racial, and linguistic populations.

**Cultural Competent Services:**

- Are available, accessible and welcoming to all clients regardless of race, ethnicity, language, age, and sexual orientation.
- Provide a physical environment that is friendly, respectful and inclusive of all cultures.
- Provide information, resources and reading materials in multilingual formats.
- Promote and foment culturally accepted social interactions, respect and healthy behaviors within the family constellation and service delivery system.
- Provide options for services, which are consistent with the client's beliefs, values, healing traditions, including individual preferences for alternative, spiritual and/or holistic approaches to health.

- Offer services in unserved and underserved communities.
- Have services available in the evening and on weekends to ensure maximum accessibility.
- Offer services in Spanish and other necessary languages (such as Tagalog, Vietnamese, Oaxacan, Triqui and other languages spoken of Monterey County residents).

### **Definitions for Cultural Competency**

*“Cultural Competence” is defined as a set of congruent practice skills, knowledge, behaviors, attitudes, and policies that come together in a system, agency, or among consumer providers, family members, and professionals that enables that system, agency, or those professionals and consumers, and family member providers to work effectively in cross-cultural situations.*

(Adapted from Cross, et al., 1989; cited in DMH Information Notice No.02-03).

*“Cultural Competence” is a means to eliminating cultural, racial and ethnic disparities. Cultural Competence enhances the ability of the whole system to incorporate the languages, cultures, beliefs and practices of its clients into the service. In this way all clients benefit from services that address their needs from the foundation of their own culture. Strategies for elimination of these disparities must be developed and implemented. Cultural Competence must be supported at all levels of the system.*

(CMHDA Framework for Eliminating Cultural, Linguistic, Racial and Ethnic Behavioral Health Disparities)

*[Cultural Competency] A set of congruent behaviors, attitudes, and policies that come together in a system, agency or amongst professionals and consumers and enables that system, agency or those professionals and consumers to work effectively in cross-cultural situations.*

(Cross, Bazron, Dennis & Issacs, 1989)

*The ability to work effectively with culturally diverse clients and communities.*

(Randall David, 1994)

COLLABORATOR hereby agrees that it will comply with the principles and guidelines set forth in Monterey County’s Health Department – Behavioral Health’s Cultural Competency Policy (as outlined above), and will:


1. Develop organizational capacity to provide services in a culturally and linguistically competent manner. This may include: hiring staff with the linguistic capabilities needed to meet the diverse language needs in Monterey County (for example, Spanish, Tagalog, Vietnamese, Oaxacan, Triqui, American Sign Language (ASL), Middle Eastern languages); providing staff with training in cultural competency; making services accessible at locations and times that minimize access barriers, and ensuring that staff have an open, welcoming and positive attitude and feel comfortable working with diverse cultures.
2. Create a physical environment that ensures people of all cultures, ages and sexual orientation feel welcome and cared for. This may include: decorating waiting and

treatment areas with pictures that reflect the diverse cultures of Monterey County; providing reading materials, resources and magazines in varied languages, at appropriate reading levels and suitable for different age groups, including children and youth; consideration of cultural differences and preferences when offering refreshments; ensuring that any pictures, symbols or materials on display are not unintentionally disrespectful to another culture.

3. Provide a services delivery environment that ensures people of all cultures, ages and sexual orientation feel welcome and cared for. This may include: respect for individual preferences for alternative, spiritual and/or holistic approaches to health; a reception staff that is competent in the different languages spoken by consumers/families; staff that is knowledgeable of cultural and ethnic differences and needs, and is able and willing to respond in an appropriate and respectful manner.
4. Support the county's goal to reduce disparities to care by increasing access and retention while decreasing barriers to services by unserved and underserved communities.
5. Include the voice of multi-cultural youth, client and family members, including: monolingual and bilingual clients and family members and representatives from unserved and underserved communities, in the advisory/governance body or committee for development of service delivery, planning and evaluation (County Goal: 40%).
6. Participate in outcome evaluation activities aimed at assessing individual organizations as well as countywide cultural competency in providing mental health services.
7. As requested, meet with the Monterey County Health Department - Behavioral Health Director or designee to monitor progress and outcomes of the project.
8. Ensure that 100% of staff, over a 3 year period, participate in cultural competency training including, but not limited to, those offered by Monterey County Behavioral Health.

Dissemination of these Provisions. COLLABORATOR shall inform all its officers, employees, agents, and subcontractors providing services hereunder of these provisions.

***By my signature below, as the authorized representative of the COLLABORATOR named below, I certify acceptance and understanding for myself and the COLLABORATOR of the above provisions.***

  
Signature of Authorized Representative  
6/17/2015  
Date

**MONTEREY PENINSULA UNIFIED  
SCHOOL DISTRICT**

COLLABORATOR (Organization Name)  
Daniel PK Diffenbaugh, Ed.L.D.,  
Name of Authorized Representative (*printed*)  
Superintendent  
Title of Authorized Representative

**EXHIBIT D:**  
**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement"), effective **July 1, 2015** ("Effective Date"), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department ("Covered Entity") and **Monterey Peninsula Unified School District** ("Business Associate") (each a "Party" and collectively the "Parties").

Business Associate provides certain services for Covered Entity ("Services") that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity ("PHI"). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the "Privacy Rule"), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the "Security Rule"), under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations ("HITECH"). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 et. seq. apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 et seq. ("CMIA"), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 ("Red Flag Rules"). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("E PHI"), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

**1. DEFINITIONS**

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

**2. PERMITTED USES AND DISCLOSURES OF PHI**

**2.1 Unless otherwise limited herein, Business Associate may:**

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that

such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law , or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

### **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

**3.1 Responsibilities of Business Associate.** With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered

Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

#### **4. TERMS AND TERMINATION**

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

#### **5. MISCELLANEOUS**

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised

obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:  
Dan Albert, Associate Superintendent  
District Business Services  
700 Pacific Street  
Monterey, CA 93940  
Tel: 831-645-1269  
Fax: 831-649-4175

If to Covered Entity, to:  
Monterey County Health Department/Behavioral Health Bureau  
1270 Natividad Road, Salinas, CA 93906  
Attn: Behavioral Health Director  
Tel: (831) 755-4509  
Fax: (831) 755-4980

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest

possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

**COUNTY OF MONTEREY, ON BEHALF OF  
THE HEALTH DEPARTMENT**

**[BUSINESS ASSOCIATE]  
MONTEREY PENINSULA UNIFIED  
SCHOOL DISTRICT**

By: 

By: 

Print Name: Bay Bullide

Print Name: Daniel PK Diffenbaugh, Ed.L.D.,

Print Title: Director of Health

Print Title: Superintendent

Date: 10/23/15

Date: 6/17/2015