

Template Agreement between PLAN and MSSP PROVIDER

AGREEMENT

ARTICLE I- DEFINITIONS

ARTICLE II – DUTIES OF THE PLAN

**Care Coordination
Payment Obligation
Notice Requirements
Orientation**

ARTICLE II – DUTIES OF THE MSSP PROVIDER

**Referrals
Care Coordination
Wait List
Eligibility Determination
MSSP Enrollment
Care
Compliance
Organization
Care Management Team
Care Plan
Purchased Waiver Services
Case Files
Management Information Systems (MIS)
Notice Requirements
Transition
Enrollment Verification
Confidential and Privacy of Member Information
Fraud, Waste and Abuse
Orientation**

ARTICLE IV – PAYMENTS AND CLAIMS PROCESSING

**Claim to PLAN
Payment
Encounter Data Submission**

ARTICLE V – RECORDS AND REPORTS

**Records
Access/Inspection**

**Record Retention
Subcontractor/Vendor Agreements
Reporting**

ARTICLE VI – TERMINATION OF THE AGREEMENT

**Termination of Agreement by Either Party
Effect of Termination**

ARTICLE VII – DISPUTE RESOLUTION

**Dispute Resolution Process
Judicial Reference
Limitations**

ARTICLE VIII

**Appeal and Grievance Process of PLAN
And Fair Hearing
PLACEHOLDER**

ARTICLE IX – INSURANCE

ARTICLE X – INDEMNITY

**MSSP PROVIDER Indemnification
PLAN Indemnification
Third Party Liability**

ARTICLE XI– MISCELLANEOUS

**Subcontract
Entire Agreement
Amendments
Notices
Waiver of Obligations
Counterparts
Headings
Governing Law
Offshoring
Confidentiality
Conflicts of Interest
Inurement
Assignment
Compliance with Laws
Independent Contractor**

Invalidity and Severability

EXHIBITS

Exhibit 1 – MSSP Site Manual list of Waiver Services located at:

<http://aging.ca.gov/ProgramsProviders/MSSP/SiteManual//>

Exhibit 2 – Claim Processing Form

Exhibit 3 – Encounter Data Form

AGREEMENT

This Agreement is entered into by and between _____ (“PLAN”) and _____ (“MSSP PROVIDER/Contractor”), as of _____ (“Effective Date”) and will expire on _____, subject to Article VI below (TERMINATION OF AGREEMENT). This agreement covers the following zip codes:

_____.

This Agreement incorporates in its entirety California’s Home and Community-Based Waiver pursuant to section 1915(c) of Title XIX of the Social Security Act. This Agreement and performance hereunder cannot conflict with the Waiver. Where a conflict exists between the Waiver and this Agreement or performance hereunder, the provisions of the Waiver govern.

RECITALS

- A. WHEREAS, PLAN is an independent organization contracted directly with the California Department of Health Care Services (DHCS) to implement the Coordinated Care Initiative (CCI). PLAN is to organize providers to provide Medi-Cal covered benefits to Medi-Cal beneficiaries who are enrolled with the PLAN;
- B. WHEREAS, MSSP PROVIDER is an entity contracted with the California Department of Aging (CDA) for ___ slots to provide MSSP Waiver services to eligible Medi-Cal beneficiaries on behalf of DHCS pursuant to an Interagency Agreement between DHCS and CDA to provide the Multipurpose Senior Services Program (MSSP).
- C. WHEREAS, in accordance with the requirements of the Centers for Medicare & Medicaid Services (CMS), Welfare & Institutions Code section 14132.275, DHCS and CDA, PLAN is required to contract with MSSP PROVIDERs for the provision of MSSP Waiver Services to PLAN Members who are eligible and choose to participate in the MSSP Program;
- D. WHEREAS, the parties hereto desire to enter in this Agreement to provide a statement of their respective rights and responsibilities in connection with the provision of Medi-Cal benefits to _____ (Name of County) by MSSP PROVIDER during the term hereof.
- E. NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained the parties agree as follows:

ARTICLE I

DEFINITIONS

- A. Assessment** means health, social and psychosocial evaluation of a potential or existing MSSP Waiver Participant's ability to function within his or her home environment. Assessment is performed by a team of qualified professionals using the following standard tools:
1. **Initial Health Assessment Tool** which is used to gather basic and measurable information regarding the MSSP Applicant or MSSP Waiver Participant's health status and ability to perform basic activities; and
 2. **Initial Psychosocial Assessment Tool** which is used to gather objective measureable information about the MSSP Applicant or MSSP Waiver Participant's cognitive, physical and psychological functioning, spiritual beliefs, social support systems and environment.
- B. Care Management** means the coordination of existing community resources and Purchased Waiver Services required to enable MSSP Participants to continue living safely at home. Care Management includes establishing and implementing a written care plan and assisting MSSP Participants to access services authorized under the care plan. Care Management generally includes, among other tasks, referral to, and coordination of, other necessary medical, social, psychosocial and other services identified in the care plan.
- C. Care Management Support** means administrative and operating expenses that pay for Care Management functions.
- D. Certifiable for Placement** means the MSSP Applicant or MSSP Waiver Participant that has been determined by the MSSP PROVIDER to have either a level of functional impairment or a medical condition that warrants nursing facility placement.
- E. Certification** means a determination that an existing MSSP Applicant or MSSP Waiver Participant is functionally impaired or has a medical condition to the extent of requiring level of care provided in a nursing facility.
- F. Encounter** means any authorized service consistent with any of the three (3) MSSP service categories (Care Management, Care Management Support or Purchased Waiver Services) provided to or purchased by MSSP PROVIDER for an enrolled PLAN Member during a given month. Each MSSP Waiver Participant incurs one encounter per month for care management and care management support. However, each MSSP Waiver Participant may submit more than one encounter for Purchased Waiver Services (PWS) because each unit of PWS is counted as a separate encounter.

- G. Eligibility Determination** means a process by which the MSSP PROVIDER determines whether a MSSP Applicant or MSSP Waiver Participant meets eligibility criteria to participate in the MSSP and receive MSSP Waiver Services.
- H. Fraud, Waste and Abuse** means the intentional misrepresentation of data for financial gain; waste means overutilization resulting from deficient practices or decisions; abuse means payment for items/services where there was no intent to deceive or misrepresent, but the outcome of poor insufficient methods results in unnecessary costs to the Medicare program.
- I. Level of Care (LOC)** means a clinical certification by MSSP PROVIDER that the MSSP Applicant or MSSP Waiver Participant meets the requirement for a nursing facility placement.
- J. Medicare** means the federally-administered program, begun in 1965, which covers basic medical and hospital services, excluding long-term institutional care, for older persons and persons with disabilities.
- K. Member** means any person who is enrolled with the PLAN and receives benefits from the PLAN.
- L. Multipurpose Senior Services Program (MSSP or MSSP Program)** means a program approved under the federal Medicaid Home and Community-Based, 1915(c) Waiver designed to prevent premature institutionalization through provision of comprehensive social and health care management to assist frail elder persons, who are certifiable for placement in a nursing facility, to remain at home at a cost lower than nursing facility care.
- M. MSSP Applicant** means a Member who has submitted an application to the MSSP PROVIDER to receive MSSP Waiver Services.
- N. MSSP Catchment Area** means the geographic area including particular zip codes to be served by the MSSP PROVIDER.
- O. MSSP Care Plan** means a document developed annually by MSSP PROVIDER in partnership with each MSSP Participant, which identifies the needs, goals and all services necessary to maintain the MSSP Participant in the community.
- P. MSSP Care Management Team** means an interdisciplinary team of health care professionals that meet the professional qualifications specified in the MSSP Waiver.
- Q. MSSP Provider** means an entity contracted with CDA to participate in the MSSP Waiver program and provide MSSP Waiver Services.

- R. MSSP Waiver Participant** (or a “Participant”) means any Member who has met MSSP eligibility requirements and has been enrolled in the MSSP.
- S. MSSP Waiver or Waiver** means the Section 1915(c) Home and Community-Based Waiver approved by CMS (Title XIX of the Social Security Act). This Waiver authorizes the State to administer the MSSP.
- T. MSSP Waiver Services** means comprehensive Care Management, Care Management Support and Purchased Waiver Services as approved by CMS.
- U. MSSP Waiver Slot** means a position, whether vacant or filled, which is funded according to an MSSP PROVIDER site budget and allocated for a Participant during a given month.
- V. PLAN** means a health care plan organized under DHCS’ Two-Plan, County Organized Health System, or Geographical Managed Care models and contracted with DHCS to participate in the CCI.
- W. Purchased Waiver Services** means goods and services approved for purchase under Title XIX of the Social Security Act, 1915(c) Home and Community Based Waiver authority. The list of MSSP Purchased Waiver Services is included in Exhibit 1.
- X. Reassessment** means an evaluation of an existing MSSP Waiver Participant’s functional level(s) and support systems, or as needed due to MSSP Waiver Participant’s change in condition.
- Y. Subcontractor/Vendor** means the legal entity contracted by the MSSP PROVIDER to provide Purchased Waiver Services to MSSP Waiver Participants.
- Z. Waiver Participant Count** means the total number of PLAN Members who are MSSP Waiver Participants at the time MSSP PROVIDER submits claim to PLAN.
- AA. Wait List** means a list of potential MSSP Participants, established and maintained by the MSSP PROVIDER, when the MSSP PROVIDER has reached its capacity. The MSSP PROVIDER determines the priority of enrollment into the MSSP in accordance with CDA and CMS requirements.

ARTICLE II

DUTIES OF THE PLAN

- A. **Referrals** – PLAN shall inform its Members about the MSSP Program and establish a mechanism to refer Members who are enrolled in the Medi-Cal plan for Managed Long-Term Services and Support and are potentially eligible for the MSSP Program to MSSP PROVIDER for eligibility determination.
- B. **Care Coordination** – PLAN will coordinate and work collaboratively with MSSP PROVIDER on care coordination activities surrounding the MSSP Waiver Participant including, but not limited to: coordination of benefits between PLAN and MSSP PROVIDER to avoid duplication of services and coordinate Care Management activities particularly at the point of discharge from the MSSP.
- C. **Payment Obligation** – PLAN shall verify the member status prior to making payment to MSSP PROVIDER in the manner and at the times specified in this Agreement.
- D. **Notice Requirements** - PLAN shall notify MSSP PROVIDER within five (5) business days after occurrence of:
- MSSP Waiver Participant's or MSSP Applicant's enrollment in to or disenrollment from PLAN.
 - State of California in writing 30 days prior to termination of contract.
- E. **Orientation** - PLAN shall provide orientation of PLAN benefits and procedures to staff of MSSP PROVIDER.
- F. **Confidentiality and Privacy of Member Information** – Any disclosure of confidential Member information between MSSP PROVIDER and PLAN shall be for the purposes of coordinating Member health care services administered by the MSSP PROVIDER. MSSP PROVIDER and PLAN agree to abide by PLAN policies regarding Protected Health Information (PHI), the Health Insurance Portability and Accountability Act (HIPAA), the Health Information for Economic and Clinical Health Act (HITECH), the California Confidentiality of Medical Information Act (CMIA), and any other applicable state and/or federal privacy law and/or regulation. MSSP PROVIDER and PLAN shall meet at agreed upon intervals to evaluate the effectiveness of the exchange of such confidential information.

To protect the confidentiality and privacy of electronic Protected Health Information (ePHI) transmitted or sent to entities outside of PLAN, MSSP PROVIDER agrees to the following:

ARTICLE III

DUTIES OF THE MSSP PROVIDER

- A. **Referrals** – MSSP PROVIDER shall accept referrals of PLAN Members from PLAN and non-PLAN sources.
- B. **Care Coordination** – MSSP PROVIDER will:
1. Coordinate and work collaboratively with the PLAN on care coordination activities relating to the benefits and services of the MSSP Waiver Participant in order to avoid duplication of benefits and/or services.
 2. Coordinate with PLAN regarding available care options prior to MSSP PROVIDER making a final determination to disenroll a MSSP Waiver Participant from the MSSP Program when the disenrollment is a result of:
 - a. Ineligibility for the MSSP Waiver.
 - b. Cost of providing MSSP Waiver Services to an MSSP Waiver Participant being beyond the cost parameters established for the MSSP Program.
 - c. Proposed institutionalization.
 - d. Inability or unwillingness of MSSP Waiver Participant to follow the care plan.
 - e. Refusal of service by MSSP Waiver Participant or referred PLAN Member.

Coordinate with PLAN to ensure transition of care for PLAN Members after termination of this Agreement.

- C. **Wait List** - MSSP PROVIDER shall establish and maintain a wait list of individuals referred to the MSSP, when MSSP PROVIDER has reached its capacity. The wait list and priority of admission into MSSP shall be determined by the MSSP PROVIDER in accordance with CDA and CMS requirements. On a monthly basis, no later than the fifth (5th) of each month, MSSP PROVIDER shall provide the PLAN with a list of PLAN Members on the waitlist.
- D. **Eligibility Determination** – MSSP PROVIDER shall conduct initial determination and ongoing verification of eligibility for participation in the MSSP Waiver.
- E. **MSSP Enrollment** -MSSP PROVIDER shall enroll a MSSP Applicant into the MSSP if:
1. the MSSP Applicant is eligible for MSSP Waiver Services;
 2. the MSSP Applicant chooses to enroll in MSSP with MSSP PROVIDER; and
 3. MSSP PROVIDER has a vacant, funded MSSP Waiver Slot

- F. **Care** - MSSP PROVIDER shall provide MSSP Waiver services approved by the CMS of the Department of Health and Human Services under the existing 1915(c) Home and Community-Based Services waiver.
- G. **Compliance** –MSSP PROVIDER shall comply with all MSSP Waiver requirements. In addition, MSSP PROVIDER must ensure that MSSP Waiver Participants receive the services identified in the care plan.
- H. **Organization** - MSSP PROVIDER shall maintain and have on file a written description and an organizational chart that outlines the structure of authority, responsibility, and accountability within MSSP PROVIDER, and within the parent organization for MSSP PROVIDER, if any.
- I. **Care Management Team**– MSSP PROVIDER shall employ a Care Management Team that consists of a social worker and a registered nurse. Members of the Care Management Team shall meet the qualifications set forth in the MSSP Waiver and shall be staffed in sufficient numbers to meet MSSP Waiver requirements. The Care Management Team shall:
1. Determine MSSP Waiver Participant eligibility and help assure that appropriate services are provided to the MSSP Waiver Participant.
 2. Work with the Participant throughout the Care Management process (e.g., assessment, care plan development, service coordination, service delivery and ongoing monitoring).
 3. Provide information, education, counseling, and advocacy to the MSSP Waiver Participant and family, and identify resources to help assure the timely, effective, and efficient mobilization and allocation of all services, regardless of the source, to meet the MSSP Waiver Participant’s care plan goals.
 4. When necessary MSSP care management team shall collaborate to share MSSP Participant’s assessment, reassessments and care plan with PLAN Interdisciplinary Care Team whenever there is a change in the care plan or significant change in the MSSP Participant’s health status.
- J. **Care Plan** - MSSP PROVIDER’s Care Management Team shall perform the MSSP Waiver Participant’s assessments and work with the MSSP Waiver Participant, family, PLAN, and others to develop a care plan covering the full range of required psycho-social and health services. The Care Management Team shall continue to work with the MSSP Waiver Participant to assure that she/he is receiving and benefiting from the services and to determine if modification of the care plan is required.

K. **Purchased Waiver Services** - MSSP PROVIDER may purchase MSSP Waiver Services when necessary to support the well-being of a MSSP Waiver Participant.

1. Prior to purchasing services, MSSP PROVIDER shall verify, and document its efforts, that alternative resources are not available (e.g. family, friends and other community resources). Approved Purchased Waiver Services are listed and defined in the MSSP Provider Site Manual located in Exhibit 1.
2. MSSP PROVIDER may either enter into contract with Subcontractors/Vendors to provide Purchased Waiver Services or directly purchase items through the use of a purchase order.
3. MSSP PROVIDER shall maintain written Subcontractor/Vendor agreements for the following minimum array of Purchased Waiver Services as defined in Exhibit 1 at all times during the term of this Agreement:
 - a) Adult Day Support Center (ADSC) and Adult Day Care (ADC)
 - b) Housing Assistance
 - c) Supplemental Personal Care Services
 - d) Care Management
 - e) Respite Care
 - f) Transportation
 - g) Meal Services
 - h) Protective Services
 - i) Special Communications
4. Such MSSP Subcontractor/Vendor agreements shall specify terms and conditions and payment amount and shall assure that Subcontractors/Vendors shall not seek additional or outstanding unpaid amounts from the MSSP Participant or the PLAN
5. MSSP Providers shall assure to the PLAN that its Subcontractors/Vendors have the license, credentials, qualifications or experience to provide services to the MSSP Participant.
6. MSSP PROVIDER shall be responsible for coordinating and tracking MSSP Purchased Waiver Services for a MSSP Waiver Participant.

L. **Case Files**- MSSP PROVIDER shall maintain an up-to-date, centralized, and secure case file record for each MSSP Waiver Participant. Case files shall consist of, at a minimum, the following:

1. Application Form
2. MSSP Authorization for Use and Disclosure of Protected Health Information Form
3. Client Enrollment/Termination Information Form
4. Certification/Recertification Form (LOC)

5. Initial health and psychosocial assessments and reassessments and most recent Reassessment
6. Summaries, Care Plan, and Service Planning and Utilization Summary (SPUS), Client progress notes and other client-related information (e.g. correspondence, medical/psychological/social records)
7. Denial or discontinuance letters (Notice of Action)
8. Termination Forms
9. Fair Hearing documentation

M. **Management Information Systems (MIS)** - MSSP PROVIDER shall maintain and operate an MIS at its site for submission of encounter data to PLAN, consistent with Article IV, section C, Encounter Data Submission.

N. **Notice Requirements** – MSSP PROVIDER shall provide notice as follows:

1. Five (5) business days written notice to PLAN after the following occurrences:
 - a) Disenrollment of a MSSP Waiver Participant from MSSP due to death, relocation, or voluntary disenrollment.
 - b) Enrollment in the MSSP Waiver of a PLAN Member who was not referred by PLAN.
 - c) Referral of a PLAN Member to MSSP by non-plan sources.
 - d) Determination by MSSP PROVIDER that an MSSP Applicant referred by the PLAN is ineligible for enrollment in MSSP.
 - e) Placing PLAN Member on a wait list.
 - f) Moving a PLAN Member or MSSP Applicant from the wait list to MSSP.
 - g) Change of MSSP PROVIDER ownership or legal name.
 - h) Transition of MSSP Waiver Participants to another MSSP Provider and site.
 - i) Denial or discontinuation of services.
2. Within thirty-five (35) days of relocation of a MSSP site.
3. One-hundred and eighty (180) days prior written notice to PLAN of termination of its contract with CDA.
4. Thirty (30) days written notice to State of California prior to termination of Agreement with PLAN.

O. **Transition** - In case of termination of this Agreement, MSSP PROVIDER shall work collaboratively with PLAN to develop a transition plan to ensure safe transition of clients out of MSSP.

P. **Enrollment Verification** - MSSP PROVIDER shall verify monthly whether the MSSP Waiver Participant remains eligible for Medi-Cal and in which managed care plan the MSSP Waiver Participant is enrolled. PLAN enrollment can be validated through the Medi-Cal Eligibility Determination System (MEDS) and/or

directly with PLAN. This verification should occur prior to submitting monthly claims to PLAN as outlined in Article IV.

1. Unencrypted Member ePHI sent to entities outside of PLAN using internet based services must be secured using virtual private networks (VPN), secure socket layer (SSL), transmission layer security (TLS), secure file transport protocol (SFTP), or other method that can encrypt communications over the public internet; and
 2. Removable storage devices used to store ePHI must be encrypted before being sent to entities outside of PLAN.
- Q. **Orientation** - MSSP PROVIDER shall provide orientation of MSSP Waiver Services to staff of PLAN.
- R. **Fraud, Waste and Abuse** – MSSP PROVIDER agrees to immediately notify PLAN if any Fraud, Waste, or Abuse is identified in providing the MSSP Waiver Services under this Agreement.

ARTICLE IV

PAYMENTS AND CLAIMS PROCESSING

A. Claim to PLAN

No later than the 5th day of each month, the MSSP PROVIDER shall submit a monthly claim to the PLAN. The monthly claim shall be for each PLAN Member enrolled in the MSSP as of the first day of the month for which the claim is submitted. PLAN shall pay MSSP PROVIDER no later than 30 days after receipt of an undisputed claim. The claim shall include at a minimum the following data elements: Member name, Client Index Number (CIN), and MSSP Provider number [Exhibit 2]. The format and mode of transmittal of the invoice shall be the capitated rate payment Form or 837i format.

B. Payment

1. PLAN shall pay MSSP PROVIDER a fixed monthly amount for each PLAN Member receiving MSSP Waiver Services. Such MSSP amount shall be equal to one twelfth (1/12th) of the annual amount budgeted per MSSP Waiver slot allotment in the MSSP Waiver.
2. MSSP PROVIDER shall accept PLAN's payment as payment in full and final satisfaction of PLAN's payment obligation for MSSP Waiver Services for each MSSP Waiver Participant enrolled in PLAN.

3. MSSP PROVIDER shall not submit separate claims to different plans for the same MSSP Waiver Participant within the same invoice period.
4. The PLAN shall send payment for each PLAN Member to MSSP PROVIDER upon receipt of the monthly claim from the MSSP PROVIDER. PLAN shall pay MSSP PROVIDER no later than 30 days after receipt of the claim.
5. MSSP PROVIDER shall make timely payments to its Subcontractors/Vendors under this Agreement.

C. Encounter Data Submission

1. MSSP PROVIDER shall submit monthly to PLAN zero-cost electronic encounter data for all MSSP Waiver Services rendered to MSSP Waiver Participants. The format of the encounter data shall be in the X12 5010 837i format
2. MSSP PROVIDER shall submit aAll encounter data within three (3) months from the end of the month that service was provided.

D. In the event the PLAN fails to pay the MSSP PROVIDER for MSSP Waiver Services, the MSSP Participant shall not be liable to the MSSP PROVIDER for any sums owed by the PLAN. MSSP PROVIDERS shall not collect, or attempt to collect from an MSSP Waiver Participant any sums owed to the MSSP PROVIDER by the PLAN. MSSP Provider may not and will not maintain any action at law against an MSSP Waiver Participant to collect sums owed by the PLAN.

E. MSSP PROVIDER shall not differentiate or discriminate in providing MSSP Waiver Services to MSSP Waiver Applicants because of race, color, religion, national origin, ancestry, age, sex, marital status, sexual orientation, physical, sensory or mental handicap, socioeconomic status, or participation in publicly financed programs of health care. MSSP PROVIDER shall render MSSP Waiver Services to MSSP Waiver Participants in the same location, in the same manner, in accordance with the same standards, and within the same time availability, regardless of payer.

F. MSSP PROVIDER shall not differentiate or discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical, sensory or mental disability unrelated to the individual's ability to perform the duties of the particular job or position.

ARTICLE V
RECORDS AND REPORTS

A. Records

1. MSSP PROVIDER shall maintain complete records pertaining to services rendered under the terms of this Agreement (subject to patient confidentiality requirements). Such records, whether in hard copy or in electronic format, shall include but not be limited to, financial records; administrative records; and medical/non-medical services records for MSSP Waiver Participants related to MSSP Waiver Services provided under this Agreement.
2. Said records shall be maintained in accordance with the Generally Accepted Accounting Principles (GAAP), and in accordance with applicable State and federal requirements. Records shall be legible, current, organized, accurate, comprehensive, and kept in a secure location.

B. Access/Inspection - MSSP PROVIDER agrees to provide the PLAN or its duly authorized representatives with access to all records pertaining to the services rendered under the terms of this Agreement (subject to patient confidentiality requirements) for the purposes of inspection, examination, or copying. PLAN shall provide to MSSP PROVIDER a minimum of ten (10) business days written notice prior to access/inspection.

C. Record Retention - Records shall be retained for a term of at least seven (7) to ten (10) years from the close of the State's fiscal year in which this Agreement was in effect. The requirement to maintain records shall remain in effect even upon the termination of this Agreement pursuant to Article VI.

D. Subcontractor/Vendor Agreements - All agreements between MSSP PROVIDER and any Subcontractor/Vendor shall require Subcontractor/Vendor to make all applicable records available at all reasonable times for inspection, examination or copying by PLAN or its duly authorized representatives. Said agreement shall require the Subcontractor/Vendor to retain such records for a term of at least seven (7) to ten (10) years from the close of the State fiscal year in which the Subcontract/Vendor is in effect.

E. Reporting

3. Upon request, MSSP PROVIDER agrees to furnish PLAN with the following:
 - a) Waiver Participant Count
 - b) MSSP Encounter Data
 - c) MSSP Quarterly Report

4. MSSP Provider shall use the standard format found in Exhibit 3, to report Encounter Data to Plan.

ARTICLE VI

TERMINATION OF THE AGREEMENT

A. Termination of Agreement by Either Party

1. Either party to this Agreement shall have the right to terminate this Agreement for cause, if either party:
 - a. Takes any action that threatens the life, health or safety of MSSP Waiver Participants.
 - b. Violates the law or fails to comply with any material term of this Agreement.
 - c. Terminates its contract with the State of California
 - d. Is debarred or suspended, or otherwise disqualified from Federal Financial Participation or Medi-Cal participation.
 - e. Endangers the performance of this Agreement due to an unsatisfactory financial condition, including loss of funding source, bankruptcy, or delinquent payment of taxes.
 - f. Engages in a fraudulent activity against the other party or Members.
2. The complaining party shall provide the responding party thirty (30) days written notice of termination for cause ("Notice of Termination"), specifying the applicable termination provision(s), underlying facts leading to the termination, and the effective date of termination. The responding party shall have twenty (20) days after receipt of such notice to remedy the breach. If the complaining party accepts the remedy, the Notice of Termination will be canceled and this Agreement will remain in effect for the remaining term.
3. Both parties shall notify the State of California, in writing, thirty (30) days prior to termination of this Agreement.
4. The parties hereby agree and acknowledge that this Agreement does not permit the parties to voluntarily terminate the agreement.

Initials: _____ Initials: _____

B. Effect of Termination

1. As of the date of termination pursuant to any provision of this Agreement, this Agreement shall be of no further force or effect, and each of the

parties shall be relieved and discharged from performance, except as specified in Paragraph 2 of this Section B.

2. PLAN shall remain liable for payment of all MSSP services rendered to PLAN's Member up to the termination of this Agreement.

ARTICLE VII

DISPUTE RESOLUTION

- A. **DISPUTE RESOLUTION PROCESS** - PLAN and MSSP PROVIDER agree to meet and confer in good faith to resolve any disputes that may arise under or in connection with this Agreement. In all events and subject to the provisions of this Section which follow, MSSP PROVIDER shall be required to comply with the provisions of the Government Claims Act (California Government Code Section 900, et. seq.) with respect to any dispute or controversy arising out of or in any way relating to this Agreement or the subject matter of this Agreement (whether sounding in contract or tort, and whether or not involving equitable or extraordinary relief) (a "Dispute").
- B. **JUDICIAL REFERENCE** - At the election of either party to this Agreement (which election shall be binding upon the other party), a Dispute shall be heard and decided by a referee appointed pursuant to California Code of Civil Procedure Section 638 (or any successor provision thereto, if applicable), who shall hear and determine any and all of the issues in any such action or proceeding, whether of fact or law, and to report a statement of decision, subject to judicial review and enforcement as provided by California law, and in accordance with Chapter 6 (References and Trials by Referees), of Title 8 of Part 2 of the California Code of Civil Procedure, or any successor chapter. The referee shall be a retired judge of the county superior or appellate courts determined by agreement between the parties, provided that in the absence of such agreement either party may bring a motion pursuant to the said Section 638 for appointment of a referee before the appropriate judge.

Any counterpart or copy of this Agreement, filed with such Court upon such motion, shall conclusively establish the agreement of the parties to such appointment. The parties agree that the hearing before the referee shall be concluded within nine (9) months of the filing and service of the complaint. The parties reserve the right to contest the referee's decision and to appeal from any award or order of any court.

- C. **LIMITATIONS** - Notwithstanding anything to the contrary contained in this Agreement, any suit, judicial reference or other legal proceeding must be initiated within one (1) year after the date the Dispute arose or such Dispute shall be deemed waived and forever barred; provided that, if a shorter time period is prescribed under the Government Claims Act (California Government Code Section

900, et. seq.), then, the shorter time period (if any) prescribed under the Government Claims Act shall apply.

ARTICLE VIII

Appeal and Grievance Process of PLAN And Fair Hearing PLACEHOLDER

ARTICLE IX

INSURANCE

Throughout the term of this Agreement MSSP PROVIDER agrees to maintain, at its sole cost and expense, professional general liability in the minimum amount of One Million Dollars (\$1,000,000) combined single limited coverage; and One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate per year for professional liability for providing MSSP Waiver Services to Members on behalf of MSSP PROVIDER. MSSP PROVIDER employees may be covered by employer policies of insurance or by employer self-insurance programs. In the event MSSP PROVIDER procures a claims made policy as distinguished from an occurrence policy, MSSP PROVIDER shall procure and maintain prior to termination of such insurance, continuing "tail" coverage, unless successor policy coverage provides such "tail" protection. Evidence of insurance coverage for PROVIDER shall be provided to PLAN each year. MSSP PROVIDER shall provide PLAN with written notification thirty (30) days prior to any cancellation, reduction, or other material change in the amount or scope of any coverage required under this Section.

ARTICLE X

INDEMNITY

- A. MSSP PROVIDER Indemnification-** MSSP PROVIDER agrees to indemnify, defend and hold harmless PLAN, its agents, officers and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with any negligence in connection with MSSP PROVIDER'S operations or its services hereunder including the operations and services of MSSP PROVIDER's affiliates, Subcontractors/Vendors and their respective employees and agents. This provision is not intended to, nor shall it be construed to, require MSSP PROVIDER to indemnify PLAN for any PLAN liability independent of that of MSSP PROVIDER, nor to cause MSSP PROVIDER to be subject to any liability to any third party (either directly or as an indemnitor of PLAN or its

agents, officers and employees) in any case where MSSP PROVIDER liability would not otherwise exist. Rather, the purpose of this provision is to assure that PLAN and its agents, officers, and employees, will be provided with indemnification for and a defense to any vicarious or other indirect liability or claim against PLAN or such agents, officers, or employees resulting from the actions or other omissions of MSSP PROVIDER, its affiliates, Subcontractors/Vendors and their respective employees and agents in connection with their operations and services relating to this Agreement

- B. **PLAN Indemnification** – PLAN agrees to indemnify, defend and hold harmless MSSP PROVIDER, Its agents, officers and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with any negligence in connection with PLAN's operations or its services hereunder including the operations and services of PLAN's affiliates, Subcontractors/Vendors and their respective agents. This provision is not intended to, nor shall it be construed to, require PLAN to indemnify MSSP PROVIDER for any MSSP PROVIDER liability independent of that of PLAN, nor to cause PLAN to be subject to any liability to any third party (either directly or as an indemnitor of MSSP PROVIDER or its agents, officers employees) in any case where PLAN liability would not otherwise exist. Rather, the purpose of this provision is to assure that MSSP PROVIDER and its agents, officers, and employees, will be provided with indemnification for and a defense to any vicarious or other indirect liability or claim against MSSP PROVIDER or such agents, officers, or employees resulting from the actions or other omission of PLAN, its affiliates, subcontractors/vendors and their respective employees and agents in connection with their operations and services relating to this Agreement.
- c. **Third Party Liability**– In the event that MSSP PROVIDER renders services to MSSP Waiver Participants for injuries or other conditions resulting from the acts of other parties, the PLAN will have the right to recover from any settlement, award or recovery from any responsible third party the value of all services which have been rendered by MSSP PROVIDER pursuant to the terms of this Agreement.

ARTICLE XI

MISCELLANEOUS

- A. **Subcontract** – All subcontracts between MSSP PROVIDER and MSSP PROVIDER's Subcontractors shall be in writing, and entered into in accordance with the requirements of California Welfare & Institutions Code section 14200 et seq.; California Code of Regulations, Title 22, section 53000 et seq.; California Health and Safety Code section 1340 et seq.; California Code of Regulations,

Title 10, section 1300 et seq., and all other applicable Federal and State laws and regulations. MSSP PROVIDER shall pay allowable claims from qualified Subcontractors/Vendors for MSSP Waiver Services rendered to MSSP Waiver Participants in conformance with the Member's care plan.

B. Entire Agreement – This Agreement (together with all Exhibits hereto) contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. It is the express intention of the MSSP PROVIDER and the PLAN that any and all prior or contemporaneous agreements, promises, negotiations or representations, either oral or written, relating to the subject matter and period governed by this Agreement which are not expressly set forth herein shall be of no further force, effect or legal consequence after the Effective Date hereunder.

C. Amendments – This Agreement and any Exhibits hereto may be amended only by an instrument in writing, duly executed by both parties in accordance with applicable provisions of State and Federal law and regulations.

D. Notices - Any notice required to be given pursuant to the terms and provisions of this Agreement, unless otherwise indicated in this Agreement, shall be in writing and shall be sent by certified mail, return receipt requested, postage prepaid, or courier service (Federal Express, UPS, etc.) or other means which can provide written proof of delivery, to PLAN at: _____

and MSSP PROVIDER at: _____

E. Waiver of Obligations – No obligation under this Agreement or an Exhibit hereto may be waived by any party except by an instrument in writing, duly executed by the party waiving such obligations. All waivers shall specify the provisions being waived, and no waiver of any provision of this Agreement extends or implies the extension of the waiver to any other provisions of this Agreement unless so specified in writing.

F. Counterparts – This Agreement may be executed in counterparts, each of which shall be considered to be an original; however, all such counterparts shall constitute but one and the same Agreement. This Agreement may be executed by facsimile or PDF signature, all of which taken together constitute a single agreement between the parties. Each signed counterpart, including a signed counterpart reproduced by reliable means (such as facsimile and PDF), will be considered as legally effective as an original signature.

G. Headings – The headings or titles of articles and sections contained in this Agreement are intended solely for the purpose of facilitating reference, are not a part of the Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

- H. Governing Law** – This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to any conflict of law principles applied therein. Any suit or proceeding relating to this Agreement shall be brought only in the state or federal courts located in California, and all Parties hereby submit to the personal jurisdiction and venue of such courts.
- I. Offshoring** – MSSP PROVIDER shall not perform the MSSP Waiver Services or any portion thereof, nor send or make available any Confidential Information (defined below) of PLAN or any protected health information (as that term is defined by the Health Insurance Privacy and Portability Act) of any Member or MSSP Applicant outside the United States.
- J. Confidentiality** - For the purposes of this Agreement, “Confidential Information” means any software, data, business, financial, operational, customer, MSSP PROVIDER or other information disclosed by one party to the other and not generally known by or disclosed to the public. Confidential Information shall include any and all Personal Information, defined as any information that is or includes personally identifiable information. Personal Information includes, but is not limited to, name, address and any unique personal identification number. Notwithstanding anything herein to the contrary, Confidential Information shall not include information that is: (a) already known to or otherwise in the possession of a party at the time of receipt from the other party, provided such knowledge or possession was not the result of a violation of any obligation of confidentiality; (b) publicly available or otherwise in the public domain prior to disclosure by a party; (c) rightfully obtained by a party from any third party having a right to disclose such information without breach of any confidentiality obligation by such third party; or (d) developed by a party independent of any disclosure hereunder, as evidenced by written records. Each party shall maintain all of the other party’s Confidential Information in strict confidence and will protect such information with the same degree of care that such party exercises with its own Confidential Information, but in no event less than a reasonable degree of care. If a party suffers any unauthorized disclosure, loss of, or inability to account for the Confidential Information of the other party, then the party to whom such Confidential Information was disclosed shall promptly notify and cooperate with the disclosing party and take such actions as may be necessary or reasonably requested by the disclosing party to minimize the damage that may result therefrom. Except as provided in this Agreement, a party shall not use or disclose (or allow the use or disclosure of) any Confidential Information of the other party without the express prior written consent of such party. If a party is legally required to disclose the Confidential Information of the other party, the party required to disclose will, as soon as reasonably practicable, provide the other party with written notice of the applicable order or subpoena creating the obligation to disclose so that such other party may seek a protective order or other appropriate remedy. In any event, the party subject to such disclosure obligation will only disclose that Confidential Information which the party is

advised by counsel as legally required to be disclosed. In addition, such party will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. Access to and use of any Confidential Information shall be restricted to those employees and persons within a party's organization who have a need to use the information to perform such party's obligations under this Agreement or, in the case of PLAN, to make use of the services, and are subject to a contractual or other obligation to keep such information confidential. A party's consultants and subcontractors may be included within the meaning of "persons within a party's organization," provided that such consultants and subcontractors have executed confidentiality agreement with provisions no less stringent than those contained in this section. Such signed agreements shall be made available to the other party upon its request. Additionally, PLAN, may, in response to a request, disclose MSSP PROVIDER's Confidential Information to a regulator or other governmental entity with oversight authority over PLAN, provided PLAN (i) first informs MSSP PROVIDER of the request, and (ii) requests the recipient to keep such information confidential. All of a party's Confidential Information disclosed to the other party, and all copies thereof, are and shall remain the property of the disclosing party. All such Confidential Information and any and all copies and reproductions thereof shall, upon request of the disclosing party or the expiration or termination of this Agreement, be promptly returned to the disclosing party or destroyed (and removed from the party's computer systems and electronic media) at the disclosing party's direction, except that to the extent any Confidential Information is contained in a party's backup media, databases and email systems, then such party shall continue to maintain the confidentiality of such information and shall destroy it as soon as practicable and, in any event, no later than required by such party's record retention policy. In the event of any destruction hereunder, the party who destroyed such Confidential Information shall provide to the other party written certification of compliance therewith within fifteen (15) days after destruction.

K. Conflicts of Interest – MSSP PROVIDER shall ensure that its personnel do not have any conflicts of interest with respect to PLAN and the MSSP Waiver Services. "Conflict of Interest" includes activities or relationships with other persons or entities that may result in a person or entity being unable or potentially unable to render impartial assistance or advice to PLAN or any Member or MSSP Applicant, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

L. Inurement - This Agreement shall be binding upon all assignees, heirs and successors-in-interest of either party.

M. Assignment – Neither PLAN nor MSSP PROVIDER or its Subcontractors/Vendors shall assign this Agreement without the written consent of the other party.

- N. Compliance with Laws** – Parties agree to comply with all applicable State and Federal laws, regulations, and directives by regulatory agencies. It is understood and acknowledged by MSSP PROVIDER that PLAN is a public entity and subject to all applicable open meeting and record laws, including but not limited to the California Public Records Act and the Ralph M. Brown Act.
- O. Independent Contractor** - The relationship between PLAN and MSSP PROVIDER is an independent contractor relationship. Neither MSSP PROVIDER nor its employee(s) and/or agent(s) shall be considered to be an employee(s) and/or agent(s) of PLAN, and neither PLAN nor any employee(s) and/or agent(s) of PLAN shall be considered to be an employee(s) and/or agent(s) of PROVIDER. None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the parties other than that of independent parties contracting for the purposes of effectuating this Agreement.
- P. Invalidity and Severability** - In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

By signing below, I affirm that I am the duly authorized representative of the signing party and have authority to execute and bind the party for which I affix my signature.

PLAN

[Name of PLAN]

By its [Officer]

Name and Title of Signing Officer

Dated:_____

MSSP PROVIDER

[Name of MSSP PROVIDER]

By its [Officer]

Name and Title of Signing Officer

Dated:_____