

BUSINESS ASSOCIATE AGREEMENT

CONTRACT # \$contract_number

WHEREAS, the \$internal_company Benefits Program (“the Plan”), which is sponsored by the Board of Trustees for the \$internal_company (“Plan Sponsor”), has entered into an agreement (“Services Agreement”) with \$company_name (“The Business Associate”) for services to the Plan;

WHEREAS, the Department of Health and Human Services (“HHS”) has promulgated regulations which apply to the Plan and to the Business Associate; and

WHEREAS, as a condition of the Business Associate’s continued provision of services to the Plan, the Parties agree to satisfy the following terms and conditions.

NOW, THEREFORE, the Plan and the Business Associate (hereinafter the “Parties”) agree to the terms and conditions of this Agreement as follows:

I. Definitions.

The Business Associate. The term “the Business Associate” shall generally have the same meaning as the term “the Business Associate” at 45 C.F.R. 160.103, and in reference to the Party to this Agreement, means \$company_name.

HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

Catch all definition. The following terms used in this Agreement (whether capitalized or not) shall have the same meaning as those terms are used in the HIPAA Rules:

Agent, Breach, Data Aggregation, De-identified, Designated Record Set, Disclosure, Electronic Media, Electronic Protected Health Information (referred to herein as “e-PHI”), Information system; Electronic Transactions, Financial Remuneration, Genetic Information, Health Information, Health Care Operations, Individual, Individually Identifiable Health Information, Individual’s Designee, Marketing, Minimum Necessary, Notice of Privacy Practices, Payment, Protected Health Information, Required By Law, Secretary, Security; Security Incident, State law, Subcontractor, Treatment, Unsecured Protected Health Information (referred to herein as “Unsecured PHI”), and Use.

PHI. In this Agreement, references to PHI shall be construed to include e-PHI and Genetic Information.

Subcontractor. In this Agreement, references to Subcontractor shall include agents.

Terms used in this Agreement that have a specific meaning under the HIPAA Rules, but are not otherwise defined in this Agreement, shall have the same meaning as those terms in the HIPAA Rules.

II. Uses of PHI.

(a) Obligations and Activities of The Business Associate.

The Business Associate agrees to:

- (i) Use or disclose PHI only as permitted or required by the Services Agreement, this Agreement or as Required by Law. Notwithstanding any other agreement to the contrary, the Business Associate shall not use or disclose PHI in a manner that would violate the HIPAA Rules if done by the Plan.
- (ii) Use appropriate safeguards, and comply with the HIPAA Rules with respect to e-PHI, and to prevent the use or disclosure of PHI other than as provided by the Services Agreement and this Agreement. The Business Associate's administrative, physical, and technical safeguards protecting PHI, and those of its subcontractors, shall comply with applicable law, the HIPAA Rules, HHS technical guidance, and any applicable privacy and security guidelines or standards issued by the National Institute for Standards and Technology ("NIST") regarding individually identifiable information. The Business Associate shall ensure that any subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect such PHI. To the fullest extent permitted by law, the Business Associate shall be liable to the Plan for any acts, failures, or omissions of the Business Associate and those of subcontractors, as if such acts, failures, or omissions were the Business Associate's own acts, failures, or omissions. Upon request the Business Associate shall provide the Plan with a copy of its policies and procedures concerning the safeguarding of PHI and those of its subcontractors. The Business Associate will make its internal practices, books, and records relating to its use and disclosure of PHI available to the Plan and to HHS to determine compliance with the HIPAA Rules and this Agreement. The Business Associate shall provide the Plan with a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- (iii) Report to the Plan any use or disclosure of PHI not provided for by this Agreement of which the Business Associate becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. 164.410, and any security incident of which it becomes aware in accordance with Paragraph II(d), below.
- (iv) Require any subcontractors, to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of the Plan, to agree in writing, in the form of a written contract or other written agreement in accordance with 45 C.F.R. § 164.504(e)(1)(i), and agree to the same restrictions and conditions that apply to Business Associate pursuant to this Agreement.
- (v) Make access to PHI available in a designated record set, as soon as practicable (but in no case longer than ten (10) days after notice from the Plan) in the manner

reasonably requested by the Plan, either to the Plan or if directed by the Plan to an Individual, in order for the Plan to satisfy its obligations under 45 C.F. R. 164.524.

- (vi) Make available to the Plan, as soon as practicable in the manner reasonably requested by Plan (but in no case longer than ten (10) days after notice from the Plan), such information as the Plan may require to fulfill in a timely manner its obligations pursuant to 45 C.F.R. § 164.526 to amend PHI that the Business Associate maintains in a Designated Record Set, and if so notified by the Plan, to incorporate any amendments to which the Plan has agreed.
- (vii) Track and document all disclosures of PHI to third parties, and within ten (10) business days of receiving a written request from the Plan, provide the Plan with the information necessary for the Plan to make an accounting of disclosures of PHI about an Individual as required by 45 C.F.R. § 164.528. Business Associate shall provide, at a minimum, the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and the address of such entity or person, if known; (iii) a brief description of the PHI disclosed; (iv) a brief statement regarding the purpose and explanation of the basis of such disclosure and (v) the names of all individuals whose PHI was disclosed. Notwithstanding Section V, Business Associate and its subcontractor shall continue to maintain the information, if any, required under this Section II(2)(vii) for a period of six (6) years after termination of the Services Agreement.
- (viii) Provide data aggregation services in relation to the needs of the Plan.
- (ix) Limit the use and disclosure of PHI to only the minimum amount of PHI reasonably necessary to accomplish the intended purpose of the use, disclosure or request.
- (x) Mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate or its subcontractors which is in violation of the requirements of this Agreement.
- (xi) The Business Associate shall obtain no later than one (1) month from Effective Date of this Agreement and maintain during the term of this Agreement liability insurance covering claims based on a violation of the HIPAA Rules or any applicable law or regulation concerning the privacy of PHI and claims based on its obligations to protect such PHI under this Agreement in an amount not less than \$1,000,000.00 per claim. Such insurance shall be in the form of occurrence-based coverage and shall name the Plan as an additional named insured. A copy of such policy or certificate evidencing the policy shall be provided to the Plan upon written notice.

(b) **Permitted Uses and Disclosures.**

- (i) **Functions and Activities on the Plan's Behalf.** The Business Associate may use and disclose PHI to provide services and otherwise fulfill its obligations to the Plan as set forth in the Services Agreement, provided that the Business Associate does

not use or disclose PHI in a manner that violates the HIPAA Rules (or that would violate the HIPAA Rules if done by the Plan).

- (ii) **The Business Associate's Operations.** Except as otherwise limited in this Agreement, the Business Associate may use and disclose PHI for the Business Associate's proper management and administration necessary to perform its obligations under the Services Agreement, or to carry out the Business Associate's legal responsibilities, provided that, with respect to disclosure of PHI for the Business Associate's operations, either:

- (A) The disclosure is Required by Law; or

- (B) The Business Associate obtains reasonable assurance from any person or entity to which the Business Associate will disclose PHI that the person or entity will:

- (1) Hold PHI in confidence and use or further disclose PHI only for the purpose for which the Business Associate disclosed PHI to the person or entity or as, Required by Law; and

- (2) Notify the Business Associate of any instance of which the person or entity becomes aware in which the confidentiality of the PHI has been compromised (including, but not limited to, a breach of unsecured protected health information, as defined in 45 C.F.R. § 164.402). Notice shall be provided to the Business Associate with in two (2) business days of the date the person or entity became aware of the event triggering the need for the notice.

(c) **Additional Prohibitions on Unauthorized Use or Disclosure.**

- (i) **Limitations on Marketing and Fundraising.** The Business Associate shall not engage in any marketing or fundraising that uses or discloses PHI.

- (ii) **Limitation on the Sale of Records.** The Business Associate shall not directly or indirectly receive any remuneration in exchange for any PHI.

- (iii) **Limitations on De-Identification of PHI.** The Business Associate is not authorized and may not to use PHI to de-identify the information in accordance with 45 CFR 164.514 or otherwise. Although health information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d) is not individually identifiable health information, such de-identified information shall be deemed PHI for purposes of this Agreement.

(d) **Reporting Unauthorized Uses or Disclosures.**

The Business Associate agrees to:

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- (i) Report both verbally and in writing to Plan's Privacy Officer (using the contact information in the Notices section, below) any use or disclosure of PHI not permitted by this Agreement or the HIPAA Rules, such report to be made no later than two (2) business days after the Business Associate becomes aware of such misuse or inappropriate disclosure; and
- (ii) Report to Plan any security incident of which the Business Associate becomes aware, as follows:
 - (A) Attempted incidents, i.e., those incidents that are unsuccessful and neither penetrate the information systems nor cause any threat of harm to such systems, shall be reported to the Plan within thirty (30) days of the Plan's written request. The Plan will not make such request more frequently than quarterly; and
 - (B) Successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operation shall be reported to the Plan immediately. For purposes of this sub-paragraph, immediate means no later than twenty-four (24) hours of the time the Business Associate became aware of the incident.
- (e) **Breach of Unsecured PHI.** If a breach of Unsecured PHI, is caused by (or attributable to) the Business Associate and/or its agents or subcontractors, must notify Plan following the discovery of the breach without unreasonable delay and, in all cases, no later than two (2) business days from the discovery of the HIPAA breach. The Business Associate shall provide the Plan with all information required by 45 C.F.R. § 164.410 that the Business Associate has or may obtain without unreasonable difficulty. The Business Associate will provide such information to the Plan in the manner required by the HIPAA Regulations. The Business Associate's report shall include but is not limited to the following:
 - (i) Identify the nature of the non-permitted use or disclosure including how such use or disclosure was made;
 - (ii) Identify Plan's PHI used or disclosed;
 - (iii) Identify who received the non-permitted disclosure;
 - (iv) Identify what corrective action the Business Associate took or will take to prevent further non-permitted uses or disclosures;
 - (v) Identify what the Business Associate did and/or will do to mitigate any deleterious effect resulting from the non-permitted use or disclosure; and
 - (vi) Provide such other information, including a written report, as Plan may reasonably request.

The Business Associate will reimburse the Plan for all reasonable expenses Plan incurs to notify individuals of any breach experienced by the Business Associate or the Business Associate's

subcontractors, and for all reasonable expenses that the Plan incurs (or will incur) in mitigating harm to Individuals as well as to the Plan. Breaches shall be treated as discovered in accordance with the terms of the HIPAA Rule. This subsection shall survive the expiration or termination of this Agreement and shall remain in effect for at least one (1) year after the Business Associate (or its subcontractors or agents) has ceased to maintain any of the Plan's PHI.

III. Compliance with Electronic Transactions Rule.

If the Business Associate conducts in whole or in part Electronic Transactions on behalf of the Plan for which HHS has established standards, the Business Associate will comply, and will require any subcontractor it involves with the conduct of such Transactions to comply, with each requirement of the standards applicable to such Transactions. The Business Associate shall also comply with any applicable National Provider Identifier requirements.

IV. Restriction Agreements and Confidential Communications.

- (i) **Generally.** The Business Associate shall take all reasonable actions to assist the Plan in meeting its obligations under 45 C.F.R. § 164.522. Such action shall include, but not be limited to, complying with any agreement that the Plan makes that either (a) restricts use or disclosure of PHI pursuant to 45 C.F.R. § 164.522(a), or (b) requires confidential communication about PHI pursuant to 45 C.F.R. § 164.522(b), provided that the Plan provides written notice of the agreement to the Business Associate (and has not subsequently provided written notice to the Business Associate of the agreement's termination).
- (ii) **Restrictions in Cases of Self-Payment.** The Business Associate will comply with an individual's request to restrict disclosure of PHI relating to the individual if: (a) except as otherwise Required by Law, the disclosure is to a health plan for purposes of carrying out Payment or Health Care Operations (and is not for purposes of carrying out Treatment); and (b) the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full. If such request is made directly to the Business Associate (instead of to the Plan), the Business Associate will inform the Plan of the request (and of any subsequent modifications to the request) within a reasonable period of time.

V. Term and Termination.

- (a) **Term.** This Agreement shall be effective \$formula(dateformat("MMMM dd, YYYY",\$contract_start_date)) (the "Effective Date"), and Agreement shall supersede the conflicting provisions of all other agreements between the Parties and shall terminate when all of the Protected Health Information provided to the Business Associate, or created or received by the Business Associate on behalf of Plan, is destroyed or returned to the Plan, however if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with Section V(c), below.
- (b) **Right to Terminate for Cause.** The Plan may terminate the Business Associate's rights under this Agreement if (1) it determines, in its sole discretion, that the Business Associate has breached any provision of this Agreement and (2) upon written notice to the Business

Associate of the breach and providing the Business Associate a reasonable opportunity to cure the breach, the Business Associate fails to cure the breach. Any such termination of rights will be effective immediately or at such other date specified in the Plan's notice of termination. If neither terminating the Agreement nor curing the breach is feasible, the Plan shall report the breach to the Secretary.

- (c) **Return or Destruction of PHI if Feasible.** Within a reasonable time following the termination of the Business Associate's rights under this Agreement for any reason:
- (i) The Business Associate will, if feasible, return to the Plan or destroy all PHI (including any PHI in the possession of the Business Associate's subcontractors) in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom. Further, the Business Associate shall require any such subcontractor to certify to the Business Associate that it similarly returned to the Business Associate or destroyed all such information which could not be returned.
 - (ii) The Business Associate will identify any PHI (including any PHI in the possession of the Business Associate's subcontractors) that cannot feasibly be returned to the Plan or destroyed and explain why return or destruction is infeasible. The Business Associate shall extend the protections of this Agreement to such PHI, and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains (or in the case of PHI in the possession of a subcontractor, then so long as the subcontractor maintains) the information.
 - (iii) The obligations of the Business Associate under Section V(c) and of II(2)(vii) will survive the termination of this Agreement.

VI. General Provisions.

- (a) **Amendment to Agreement.** The parties agree to take such action as is necessary to amend this Agreement so that each party is able to comply with the HIPAA Rules. In the event the Agreement is not amended by the applicable effective date of any change to the law affecting this Agreement or the Parties' obligations hereunder, this Agreement will automatically amend to the extent necessary for this Agreement and the parties' obligations hereunder to remain legally compliant.
- (b) **Assignment.** The Plan has entered into this Agreement in specific reliance on the expertise and qualifications of the Business Associate. Consequently, the Business Associate's interests and obligations under this Agreement may not be transferred or assigned or assumed by any other person, in whole or in part, without the prior written permission of the Plan.
- (c) **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed as creating any rights or benefits to any third parties.

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- (d) **Interpretation.** Any ambiguity in this Agreement, or conflict or inconsistency between this Agreement and the HIPAA Rules, shall be resolved to permit the Parties to comply with the HIPAA Rules. In the event of any inconsistency or conflict between this Agreement and any other agreement between the Parties, the terms, provisions and conditions of this Agreement shall govern and control. The section headings in this Agreement are for convenience only and have no interpretive value.
- (e) **Indemnification.** The Business Associate shall indemnify and hold harmless the Plan and any of the Plan's affiliates, directors, officers, employees and agents from and against any claim, cause of action, liability, damage, cost or expense (including reasonable attorney fees) to the extent proximately arising out of or relating to any non-permitted use or disclosure of PHI in violation of its obligations hereunder or other breach of this Agreement by the Business Associate or any affiliate, director, officer, employee, agent or subcontractor of the Business Associate. This indemnification shall survive the termination of this Agreement.
- (f) **Counterparts.** This Agreement may be executed in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument.
- (g) **Notices.** Any notices permitted or required by this Agreement will be addressed as follows or to such other address as either Party may provide by notice to the other:

If to the Plan:

Attention:

\$internal_company

Executive Director

215 Columbia Street, Suite 300

Seattle, WA 98104

If to the Business Associate:

\$company_name

Attention: \$party_main_contact

\$address_1_and_2_in_block_format

\$city0, \$state_province \$zip_or_postal_code0

The Business Associate Agreement

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

PLAN: \$internal_company _____ \$internal_signer_full_name Date \$internal_signer_title	THE BUSINESS ASSOCIATE: \$company_name _____ Signature Date _____ Printed Name _____ Printed Title
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