



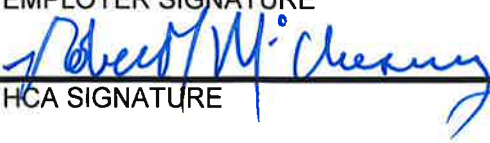
**PEBB EMPLOYER
GROUP INTERLOCAL
AGREEMENT**

HCA Contract Number: **K2044**

Employer Group Agency Number: **931**

Washington State Health Care Authority is the single state agency that administers the medical, dental, life, and disability insurance coverage for the Employees of the State of Washington and for contracted employer groups, as set forth in Title 41 RCW.

THIS Interlocal Agreement made by and between Washington State Health Care Authority, hereinafter referred to as "HCA," and **Port of Edmonds**, hereinafter referred to as the "Contractor."

EMPLOYER NAME Port of Edmonds		EMPLOYER doing business as (DBA)	
EMPLOYER GROUP ADDRESS 336 Admiral Way Edmonds, WA 98020		FEDERAL TAX ID #: 91-0821341	WA STATE UBI #: 312003498
EMPLOYER BARGAINING GROUP: All employees			
EMPLOYER CONTACT Karin Michaud	EMPLOYER TELEPHONE (425) 774 - 0549	EMPLOYER E-MAIL ADDRESS kmichaud@portofedmonds.org	
HCA PROGRAM PEB Outreach and Training		HCA DIVISION/SECTION PEB Division	HCA CONTRACT CODE
HCA CONTACT NAME AND TITLE Amy Corrigan Management Analyst		HCA CONTACT ADDRESS Post Office Box 45530 Olympia, WA 98504-5330	
HCA CONTACT TELEPHONE (360) 725-0826		HCA CONTACT E-MAIL ADDRESS amy.corrigan@hca.wa.gov	
EFFECTIVE DATE OF BENEFITS: January 1, 2017	CONTRACT START DATE: January 1, 2017	CONTRACT END DATE: No End	
PURPOSE OF CONTRACT: To provide insurance benefits from the Public Employees Benefits Board (PEBB) Program through HCA for the eligible members of the group(s) of Employees identified in this Agreement and their dependents.			
The terms and conditions of this Agreement are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Agreement. The parties signing below warrant that they have read and understand this Agreement, and have authority to execute this Agreement. This Agreement is binding on the parties only upon signature by an authorized representative of each.			
EMPLOYER SIGNATURE 	PRINTED NAME AND TITLE Robert E. McChesney, Ex. Dir. Director		DATE SIGNED 12/21/2016
HCA SIGNATURE	PRINTED NAME AND TITLE		DATE SIGNED

Approved as to Form
By Attorney General
Date: _____

1. PURPOSE

The purpose of this Agreement is to establish the terms and conditions under which HCA will provide certain benefits to Contractor and certain of its Employees and their Dependents. The scope and coverage of the benefits of PEBB Insurance Coverage will be those PEBB Insurance Coverage benefit plans approved by the Public Employees Benefits Board (PEBB). Contractor understands and agrees that these PEBB Insurance Coverage benefits may be changed from time to time by HCA in its sole discretion. Contractor's continued participation in PEBB Insurance Coverage under this Agreement will indicate Contractor's acceptance of such changes in PEBB Insurance Coverage.

2. DEFINITIONS

Capitalized terms in this Agreement and not otherwise defined herein shall have the same definitions as those stated in Title 182 WAC.

Whenever used in this Agreement, the following terms will have these meanings:

"Business Day" means all days except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Confidential Information" means information that may be exempt from disclosure to the public or unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or state or federal statutes. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

"Contract Manager" means the authorized agent who administers this Agreement on behalf of a party, ensures compliance with the terms of this Agreement, and acts as the point of contact when one party contacts the other with questions regarding the terms of this Agreement.

"Coverage Period" means the period during a Plan Year when Enrollees are enrolled in PEBB Insurance Coverage.

"Dependent" shall have the meaning set forth in WAC 182-12-109.

"Employee" means individuals employed by Contractor who fall within the meaning of "Employee" set forth in WAC 182-12-109.

"Employer Group Rate Surcharge" means the rate surcharge described in RCW 41.05.050(2).

“**Enrollee**” shall have the meaning set forth in WAC 182-12-109.

“**ERISA**” means the federal Employee Retirement Income Security Act of 1974.

“**HIPAA Rules**” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as now in effect and as modified from time to time. In part 164 of title 45 CFR, the “Security Rule” is subpart C (beginning with §164.302), the “Breach Notification Rule” is subpart D (beginning with § 164.400), and the “Privacy Rule” is subpart E (beginning with § 164.500).

“**Key**” or “**Keying**” means the process by which Contractor or HCA enters the data of Enrollees directly into a computer system of HCA’s choice.

“**PEBB**” means the Public Employees Benefits Board.

“**PEBB Insurance Coverage**” or “**Insurance Coverage**” shall have the meaning set forth in WAC 182-12-109.

“**PEBB Program**” shall have the meaning set forth in WAC 182-12-109.

“**PEBB Rules**” means all applicable statutory and regulatory eligibility, enrollment, and appeals requirements in Chapter 41.05 RCW, and Chapters 182-08, 182-12, and 182-16 WAC.

“**PEBB Wellness Incentive Program**” shall mean the wellness program described and governed by WAC 182-12-300.

“**Plan Year**” means the calendar year, beginning January 1st and ending December 31st.

“**Premium Surcharge**” shall have the meaning set forth in WAC 182-12-109.

“**Protected Health Information**” or “**PHI**” has the same meaning as in the HIPAA Rules except that in this Contract the term includes only information created by Contractor, or received from or on behalf of HCA, and relating to Employees or their Dependents.

“**Rate Book**” means the then current PEBB rate tables showing contributions rates, surcharges, and premiums for all eligible persons covered by PEBB (for instance, State Actives, Retirees, and COBRA).

“**RCW**” means the Revised Code of Washington. Any references to specific titles, chapters, or sections of the RCW includes any substitute, successor, or replacement title, chapter, or section.

“**WAC**” means the Washington Administrative Code. Any references to specific titles, chapters, or sections of the WAC includes any substitute, successor or replacement title, chapter, or section.

3. WARRANTY

Contractor represents and warrants it has authority to purchase benefits on behalf of its Employees, and it meets the criteria for purchasing benefits on behalf of its Employees as provided by Chapter 41.05 RCW, RCW 41.04.205, Chapter 182-08 WAC, and Chapter 182-12 WAC.

4. PERIOD OF PERFORMANCE

The terms of this Agreement begins on the latest date of execution by a party (“Effective Date”) and will remain in effect until the parties enter into a new agreement or terminate this Agreement pursuant to Section 31.

5. OBLIGATIONS OF CONTRACTOR

A. Responsibility For Enrollment and Enrollment Data

- i. Contractor must determine the eligibility of its Employees and their Dependents for PEBB Insurance Coverage in accordance with Appendix A, Eligibility Rules for Contractor.
- ii. Contractor must review any collective bargaining agreement, employment agreement, or other agreement affecting the rights of, or granting rights to, its Employees to ensure that enrolling in PEBB Insurance Coverage conforms to the terms and conditions of such agreement(s).
- iii. Contractor will provide HCA all required information to ensure the accurate Keying in of benefits in accordance with the terms of Section 10 of this Agreement, and for HCA to issue accurate invoices.
- iv. Upon HCA’s request, Contractor will furnish HCA with enrollment forms and supporting documentation no later than fifteen (15) Business Days after HCA sends the request.
- v. Contractor will promptly cooperate with any reasonable HCA requests to verify the accuracy of enrollment information.
- vi. Contractor will supplement and update enrollment information within five (5) Business Days after any changes occur. If Contractor submits enrollment information showing a change in an Enrollee’s enrollment status after the 20th of the month, that change may not be reflected in HCA’s enrollment data and monthly invoice until the subsequent month.
- vii. Contractor understands that the terms of this Agreement will continue to apply if Contractor enters into a new collective bargaining agreement, employment

agreement, or other agreement affecting the rights of, or granting rights to, its Employees. Contractor shall therefore consider the benefits, rights, obligations, requirements, restrictions, and limitations set forth herein, in PEBB Insurance Coverage, and in applicable laws, rules, and regulations when entering into such new agreement. HCA is and shall be under no obligation to grant exceptions to PEBB Rules requested due to the terms or conditions of such new or existing agreement.

- viii. Contractor is responsible for notice and reporting requirements under Internal Revenue Code (“IRC”) §6056 and reporting on behalf of an employer sponsored self-funded plan under IRC§6055.
- ix. Contractor must have and implement a cafeteria plan per IRC §125, and its implementing regulations, to ensure correct tax treatment of monies deposited into a health savings account. Contractor agrees such cafeteria plan will be in effect by the first Effective Date of PEBB Benefits for Employees.

B. PEBB Insurance Coverage Information

- i. Contractor agrees it will provide either (a) the then current Employee Enrollment Guide, or (b) a link to the electronic version of the Employee Enrollment Guide maintained on HCA’s website, within five (5) Business Days of (c) the start date of newly hired Employees, or (d) a change in an Employee’s work pattern such that the Employee’s eligibility status changes.
- ii. Contractor agrees it will provide eligibility information for PEBB Insurance Coverage to Employees within five (5) Business Days of (a) start date of newly hired employees, or (b) a change in an Employee’s work pattern such that the Employee’s eligibility status changes. Such notice will include a description of Contractor’s eligibility appeal process required under Section 5.H.
- iii. Contractor may produce its own additional materials on PEBB Insurance Coverage for its Employees. Any such materials must first receive written approval from HCA before being provided to Employees. In addition, Contractor must annually submit all material, including any previously approved materials, by September 15.
- iv. As set forth in WAC 182-12-116, Employees are not eligible to participate in the benefits provided under the Salary Reduction Plan as authorized under Chapter 41.05 RCW.

C. Remittance

- i. Contractor shall remit the monthly Premium, Premium Rate Owed When an Employee Waives Medical, Employer Group Rate Surcharge, and the full amount of any Premium Surcharges (*see*, Section 7), within twenty (20) days of the end of each month of the Coverage Period. Partial payment by Contractor will be deemed nonpayment.

- ii. Contractor shall be solely responsible for collecting from Employees (a) any applicable Premium Surcharge, and (b) any Employee share of the Premium.
- iii. Contractor shall be solely responsible for refunding any charge paid by the Employee to Contractor and not remitted to HCA.
- iv. Any and all deductions made by Contractor from an Enrollee's salary for the payment of premiums for (a) Life insurance, (b) Long Term Care, and/or (c) Long Term Disability, must be made on a post-tax basis.

D. Resolving Discrepancies

- i. If Contractor determines that an invoiced amount does not match the amount to be paid by Contractor for a Coverage Period, Contractor must submit a Payment Discrepancy Reporting Form to HCA to correct Contractor's account. The form may be obtained at HCA's Perspay website forms page.
- ii. When an Enrollee's enrollment in PEBB Insurance Coverage is terminated, or the Employee's salary changes, Contractor agrees to submit an Insurance Eligibility System Adjustment Form to HCA. The form may be obtained at HCA's Perspay website forms page.
- iii. Contractor is solely responsible for the completeness and accuracy of all forms it sends to HCA.

E. Benefits Limitations

- i. For any PEBB Insurance Coverage in which an Employee can enroll, Contractor will ensure that such benefits are the only Contractor-sponsored benefits available to its PEBB Insurance Coverage eligible Employees. Contractor may purchase benefits from third parties only if (a) such benefits are not included in the PEBB Insurance Coverage, or (b) are not otherwise offered or available under this Agreement.
- ii. Contractor shall not transfer Employees to other similar or competing benefits while this Agreement is in effect. HCA will only consider transfers for all of Contractor's Enrollees, and will not approve any proposed transfer of individual Employees and their Dependents.
- iii. ~~Contractor shall not pay premiums related to optional Long Term Disability (LTD) or optional Life insurance benefits purchased from PEBB-contracted LTD and Life insurance vendors.~~



- iv. Contractor shall not pay any Premium Surcharges on behalf of its Employees. Employees are solely responsible for the timely payment of any applicable Premium Surcharges.

F. Certification of Eligibility

- i. Contractor represents and warrants all Enrollees meet PEBB Rules throughout the enrollment term.
- ii. Contractor represents and warrants that it has reviewed the PEBB Rules and determined that enrolling in the PEBB Insurance Coverage does not violate or conflict with any collective bargaining agreement, employment agreement, or other agreement affecting the rights of, or granting rights to, its Employees.

G. Employer Group Scope

The following group(s) of Employees and their Dependents will be provided Insurance Coverage pursuant to this Agreement:

Port of Edmonds – All employees

Contractor may not extend eligibility for Insurance Coverage to any person outside of the defined group(s) of Employees and their Dependents without the express, written consent of HCA.

H. Appeal Rights

- i. Contractor agrees it will establish an appeal system for its Enrollees who are denied by Contractor all or part of benefits under the PEBB Insurance Coverage. Contractor agrees it will provide Enrollees notice of the opportunity to appeal at the time of such denial. Within five (5) Business Days of a request by HCA, Contractor will provide HCA a description of its appeal process and a copy of the form or template used by Contractor to provide such notices.
- ii. In accordance with WAC 182-16-025(2), Contractor is responsible for adjudicating appeals for its Employees on decisions made by the Contractor with regard to PEBB eligibility, enrollment, or a premium surcharge.
 - (a) Contractor must provide information to Enrollees to direct to HCA appeals arising from aggrieved decisions regarding life insurance, LTD insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive PEBB wellness incentive.
 - (b) When Enrollees want to appeal an aggrieved decision regarding the administration of a PEBB Insurance Coverage, Contractor must direct the Enrollee to the appeal provisions of the plan.

- iii. Enrollee appeals arising from alleged errors in LTD benefits, Life benefits, eligibility to participate in the PEBB Wellness Incentive Program, or eligibility to receive a PEBB Wellness Incentive will be referred to HCA in accordance with WAC 182-16-025.
- iv. Enrollee appeals arising from alleged errors in completion of PEBB Wellness Incentive Program requests, or a request for a reasonable alternative to a PEBB Wellness Incentive requirement, will be referred to the third party under contract with HCA to administer the PEBB Wellness Incentive Program.
- v. Contractor agrees to furnish any information and documentation related to individual appeals to HCA upon HCA's request. Such information and documents will be provided at no cost.
- vi. Contractor will implement any determination made by HCA following an appeal to HCA.

6. OBLIGATIONS OF HCA

A. Provision of Benefits

HCA agrees to provide the following PEBB Insurance Coverage benefits indicated below to Contractor's PEBB enrollees:

- PEBB Medical benefits (including the PEBB Wellness Incentive Program) only.
- PEBB Medical (including the PEBB Wellness Incentive Program), Dental, Life, LTD, property and casualty insurance, and LTC (not currently accepting new enrollment) benefits.

B. Provision of Rate Book; Notice of Changes

HCA shall either (i) publish the Rate Book on its Internet site; or (ii) provide Contractor the Rate Book (a) prior to the enrollment start date indicated in Section 8.B. and (b) at least fifteen (15) calendar days prior to the effective date of any changes to the fees and charges listed in Section 7.

C. Invoicing

HCA will issue invoices on a monthly basis to Contractor. The invoice amount will be based on the enrollment information provided by Contractor.

7. HCA CHARGES

A. Start-Up Fee

Contractor shall pay a one-time start-up fee as authorized by WAC 182-08-245(1)(a) and set forth in the Rate Book (“Start-Up Fee”). The Start-Up Fee shall be due and payable on the Effective Date.

B. Employer Group Rate Surcharge

Pursuant to RCW 41.05.050(2), HCA has developed an Employer Group Rate Surcharge to be paid by participating counties, municipalities, other political subdivisions, and tribal governments, including Contractor. The Employer Group Rate Surcharge to be paid by Contractor will be calculated as set forth in the Rate Book then in effect for the Plan Year.

C. Premium Surcharge

HCA collects Premium Surcharges in accordance with the requirements of WAC 182-08-185. The amount of the Premium Surcharge shall be set in the Rate Book.

D. Premium Rates Owed When an Employee Waives Medical

For Employees who waive the PEBB Medical benefit, HCA requires Contractor to pay a Premium Rate Owed When an Employee Waives Medical. The amount of the Premium Rate Owed When an Employee Waives Medical shall be set in the Rate Book.

8. INITIAL EFFECTIVE DATE OF BENEFITS

A. Contractor agrees that before Employees and Dependents may be enrolled in Insurance Coverage, it will:

- i. Remit to HCA the required Start-up Fee,
- ii. Sign this Agreement,
- iii. Determine Employee and Dependent eligibility and terms of enrollment for Insurance Coverage in accordance with the criteria outlined in this Agreement,
- iv. Determine eligibility in order to ensure the Insurance Coverage's continued status as a “governmental plan” under Section 3(32) of ERISA (as amended),
- v. Comply with the benefits limitations in Section 5.E. of this Agreement, and
- vi. Determine that enrolling in the Insurance Coverage does not violate or conflict with any collective bargaining agreement, employment agreement, or other agreement affecting the rights of, or granting rights to, its Employees.

B. The start date of enrollment for Contractor’s initial Enrollees is **January 1, 2017**, provided all contractual and regulatory requirements are completed on or before that date.

9. CONTRACT MANAGEMENT

The following individuals will be the Contract Managers responsible for communicating with the other party regarding this Agreement and its performance. The named Contract Manager for Contractor must have authority to act on behalf of Contractor for purposes of participation in the Insurance Coverages and must have access to information regarding Enrollees.

The Contract Manager for HCA is:

Name: Amy Corrigan
Title: Outreach & Training Manager
Address: PO Box 45530
 Olympia, WA 98504-5530
Phone: 1-800-700-1555
Email: amy.corrigan@hca.wa.gov

The Contract Manager for Contractor is:

Name: Karin Michaud
Title: office manager
Address: 336 Admiral Way
 Edmonds, WA 98020
Phone: (425) 774-0549
Email: kmichaud@portofedmonds.org

Each party must provide written notice of any changes to its designated Contract Manager, or in the Contract Manager's contact information, no later than thirty (30) days after such change occurs.

10. KEYING IN DATA

- A. HCA agrees to Key in Contractor's data if the initial number of Employees is less than seventy-five (75), and will continue to do so as long as the number of Employees remains less than seventy-five (75). If the number of Employees equals or exceeds that number, Contractor agrees to assume responsibility for Keying in data. HCA agrees to provide ongoing training and support to Contractor's designated Employees on Keying in data.
- B. If HCA is Keying in data pursuant to the terms of this section, Contractor agrees to provide HCA with all information requested by HCA for the accurate Keying in of data.
- C. Contractor must (i) Key in all requests to waive enrollment in Insurance Coverage; or (ii) if HCA is Keying in data, provide HCA with all information requested by HCA.
- D. If the initial number of Employees is equal to or greater than seventy-five (75), then Contractor shall Key in data for the term of this Agreement. At HCA's sole discretion, it may perform the initial Keying of Enrollee information prior to the initial effective date of Insurance Coverage as set forth in Section 8.B. If the number of Employees is subsequently reduced to less than seventy-five (75), Contractor shall continue Keying in data unless the parties otherwise agree in writing.

- E. Contractor may not subcontract or assign its Keying in tasks to a third party without the express, written consent of HCA.
- F. Regardless of which party is Keying in data pursuant to the terms of this section, Contractor will be responsible for errors made Keying in any and all applicable Enrollee data, including additional charges under this Agreement, payment of any amounts to Employees or Enrollees, and any other claim, judgment, penalty, fee, or fine arising out of such error. Upon discovery of any such error, or upon receiving notice of such error from HCA, Contractor has five (5) Business Days to (i) if Contractor is Keying in data, correct the erroneous data, or (ii) if HCA is Keying in the data, to provide HCA with corrected information in writing.
- G. Contractor may not Key in retroactive changes to an Enrollee's Insurance Coverage benefits. If Contractor determines that an Enrollee's benefits must be retroactively changed, such as after an appeal, within thirty (30) days of determining a need for such change, Contractor will provide HCA with a written request (i) stating the retroactive change sought, (ii) enumerating the grounds for such change, and (iii) including any other documentation supporting the change.

11. AMENDMENTS

This Agreement may be amended by written mutual agreement of the parties. Such amendments will not be binding, and no payments will be made under an amendment's terms, unless the amendment is signed by authorized agents of HCA and Contractor.

12. ASSIGNMENT

- A. Contractor cannot assign its responsibilities under this Agreement to a third party without the prior written consent of HCA. HCA's written consent, which shall not be unreasonably withheld, can condition an assignment on proof that the assignee's qualifications and ability to perform is at least equal to those of Contractor. Such assignment shall not operate to relieve Contractor of the performance of any of its duties and obligations hereunder, and such assignment shall not affect any remedies available to HCA that may arise from any breach of any provision in this Agreement.
- B. HCA may assign all or any part of this Agreement to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, provided that such assignment shall not operate to relieve HCA of any of its duties and obligations hereunder.

13. ATTORNEY'S FEES

In the event of litigation or other action brought to enforce the terms of this Agreement, each party shall bear its own costs and attorney's fees.

14. CHANGE IN PERSONNEL

As soon as reasonably possible, but no later than thirty (30) days, Contractor shall provide HCA notice of any changes to Contractor's key personnel, including, but not limited to, key personnel in human resources, payroll, and Contractor's Contract Manager.

15. CONFIDENTIAL INFORMATION AND PROTECTED HEALTH INFORMATION

Contractor is required to comply with the terms of the Business Associate Agreement incorporated into this Agreement as Exhibit A, and other applicable federal and state laws and administrative regulations governing use of Confidential Information and Protected Health Information. Contractor agrees to limit access to Confidential Information and Protected Health Information to the minimum amount of information necessary, to the fewest number of people, and for the least amount of time required to perform its duties under this Agreement. The obligations set forth in this Section shall survive the termination or expiration of this Agreement.

16. CONFORMANCE

If any provision of this Agreement conflicts with any applicable state or federal law or regulation, the Agreement language is amended to conform to the minimum requirements of the conflicting law or regulation. A provision of this Agreement that is stricter than such laws or regulations will not be deemed a conflict.

17. DISPUTES

- A. The parties shall use good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Agreement. Both parties will continue, without delay, to carry out their respective responsibilities under this Agreement while attempting to resolve any dispute.
- B. The respective Contract Managers for each party will first attempt to resolve the dispute. Either Contract Manager will provide notice of a request to meet to resolve the matter in dispute. Such notice will include a brief summary of the disputed issue, each parties' position, and a proposed resolution.
- C. If the Contract Managers cannot resolve the dispute within ten (10) Business Days after the initial request for a meeting, then either party may submit a request for a dispute resolution to the HCA Contract Administrator. The contact information for the HCA Contract Administrator is as follows:

HCA Contract Administrator
 Address: Post Office Box 42702
 Olympia, WA 98504-2702
 Phone: (360) 725-1271
 E-mail: contracts@hca.wa.gov

- D.** A party's request for a dispute resolution must be in writing and must clearly state all of the following:
- i. The disputed issue(s);
 - ii. Any additional facts necessary to explain completely and accurately the nature of the dispute; and
 - iii. A description of the remedies sought.

- E.** The HCA Contract Administrator shall oversee the following Dispute Resolution Process:

Within thirty (30) days after the submission of a request for dispute resolution,

- i. HCA shall appoint a representative to a Dispute Board;
- ii. Contractor shall appoint a representative to the Dispute Board;
- iii. HCA's and Contractor's representatives shall mutually agree on a third person to chair the Dispute Board.

The Dispute Board shall thereafter decide the dispute within thirty (30) days of the date the Dispute Board was created, with the majority prevailing.

- F.** The Dispute Board will review the facts, the terms of the Agreement, and applicable statutes and rules, and make a determination resolving the dispute within the authority of applicable statutes, rules, administrative policies, and written guidance provided by PEBB Program.
- G.** The dispute resolution process set forth in this Section is in addition to and not in replacement of any other rights, duties, and obligations set forth in this Agreement. The time frame for a party to cure any breach of the terms of the Agreement or comply with any corrective action plan shall not be tolled by the pendency of any dispute resolution procedures.

18. ENTIRE AGREEMENT

This Agreement, together with all of its Schedules, Exhibits and Attachments, constitutes the final, complete and exclusive statement of the agreement of the parties relative to the subject matter hereof, and supersedes all previous or contemporaneous oral and written proposals, negotiations, representations or understandings, including any preceding Interlocal Agreements, amendments, or other agreements between HCA and Contractor in connection with enrollment in the PEBB Insurance Coverage.

19. FORCE MAJEURE

- A.** Neither party will be liable for failure to perform under this Agreement if such failure arises out of events beyond the control of, and without the fault or negligence of, the non-performing party. Such causes may include, but are not limited to: fires, floods,

earthquakes, landslides, riots, strikes or labor disputes, major epidemics, acts of God, war, terrorist acts, embargoes, or any other similar event.

- B.** This provision will become effective only if the party failing to perform notifies the other of the extent and nature of the problem no later than seventy-two (72) hours after discovery of the event, and takes reasonable steps to limit any delay in performance of this Agreement caused by the event. The notifying party is only excused from the requirements of this Section when the failure to notify is beyond the control and without the fault or negligence of the notifying party.
- C.** Nothing in this Section shall be construed to prevent HCA from terminating this Agreement for reasons other than for default during the period of the events set forth above, or for default, if such default occurred prior to such event.

20. GOVERNING LAW AND VENUE

This Agreement will be governed by, and be construed and interpreted in accordance with, the laws of the State of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the State of Washington and the venue of any action brought under this Agreement will be the Superior Court for Thurston County in the State of Washington.

21. INCORPORATION BY REFERENCE

The parties agree the following materials are incorporated in this Agreement by reference:

- A.** Business Associate Agreement (Exhibit A)

This list is an exclusive list of the documents the parties agree are incorporated by reference as of the execution date of this Agreement. The parties may not incorporate any additional documents or materials into this Agreement unless they follow the procedures for modifying this Agreement under Section 11.

22. INDEMNIFICATION AND HOLD HARMLESS

Contractor shall defend, indemnify, and hold HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, in the performance of this Contract. Contractor's obligation to defend, indemnify, and hold HCA harmless shall not be eliminated or reduced by any alleged concurrent HCA negligence.

23. INDEPENDENT CAPACITY

Contractor and his or her employees or agents performing under this Agreement are not employees or agents of HCA or the State of Washington. Neither Contractor nor any of its

employees or agents performing under this Agreement will hold themselves out as, or claim to be, officers or employees of HCA or the State of Washington by reason of this Agreement. Contractor, its employees, and its agents will not make any claim of right, privilege, or benefit that would accrue to employees of the State of Washington or HCA under law. Contractor acknowledges and certifies that neither HCA nor the State of Washington is a guarantor of any obligations or debts of Contractor.

24. ORDER OF PRECEDENCE

In the event of an inconsistency between the terms of this Agreement, the incorporated Exhibits, or any applicable statute or regulation, the inconsistency will be resolved by giving precedence in the following order:

- A. Applicable federal statutes and regulations;
- B. Applicable Washington statutes and regulations;
- C. Any term or condition in this Agreement;
- D. Any Exhibit(s) or Appendix(-ices) to this Agreement in alphabetical order; and
- E. Any other provision, term, or material incorporated herein by reference or otherwise incorporated.

25. NOTICES

- A. Whenever one party is required to give notice to the other under this Agreement, notice shall be deemed given if mailed by United States Postal Service, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:
 - i. In the case of notice to Contractor, notice will be sent to:

Attention: Karin Michaud
Port of Edmonds
336 Admiral Way
Edmonds, WA 98020
 - ii. In the case of notice to HCA, the notice must be sent to the Contract Manager at the mailing address included in Section 9 of this Agreement.
- B. Notices shall be effective on the date delivered, as evidenced by the return receipt or the date returned to the sender for non-delivery other than for insufficient postage.
- C. Either party may change its address for notification purposes at any time by mailing a notice in accordance with this Section. Changes made pursuant to this subsection will be effective on the tenth (10th) Business Day following receipt of the notice unless a later date is specified in the notice.

26. RECORDS MAINTENANCE AND OWNERSHIP

- A. The parties will each maintain books, records, documents, and other materials that sufficiently reflect all direct and indirect costs expended by either party in the performance of the service(s) described in this Agreement. When either party requests, these records will be presented in a timely manner for inspection, review, or audit by personnel of both parties and other personnel duly authorized by state or federal law.
- B. All books, records, documents, and other material relevant to this Agreement will be retained for six (6) years after the expiration of this Agreement. At no additional cost to HCA or the State of Washington during this period, the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties will have full access to and the right to examine any of the retained books, records, documents, and other materials.
- C. If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained for one (1) year after all litigation, claims, or audit findings involving the records have been resolved.
- D. Unless otherwise agreed, records and other documents, in any medium, furnished by one party to the other will remain the property of the furnishing party. The receiving party will not disclose or make available this material to any third parties without first giving the furnishing party timely notice and a reasonable opportunity to respond.
- E. Each party will utilize reasonable security procedures and protections to ensure that records and documents are not erroneously disclosed to third parties as required under Exhibit A as well as any applicable state and federal laws.

27. PUBLIC RECORDS ACT

Both parties acknowledge that this Agreement is subject to the applicable provisions of the Washington State Public Records Act (Chapter 42.56 RCW) and its exceptions, and is a “public record” as defined in RCW 42.56.010. An unredacted copy of this Agreement will be released if HCA or a court of competent jurisdiction determines releasing such a copy is responsive to a public records request under the Public Records Act.

28. PRIVACY LAWS

Contractor will comply with all applicable privacy laws, including but not limited to the Health Insurance Portability and Accountability Act and its implementing regulations, the Washington State Uniform Health Care Information Act (Chapter 70.02 RCW), and the Washington State Patient Bill of Rights (RCW 48.43.500).

29. SEVERABILITY

If a court of appropriate jurisdiction invalidates any provision of this Agreement or any provision of any document incorporated by reference, such invalidation will not affect the other provisions of this Agreement still operational under applicable law without the invalid provision.

30. SURVIVAL

Any terms of this Agreement that would, by their nature or through the express terms of the Agreement, survive the expiration or termination of the Agreement shall so survive, including the terms of the Business Associate Agreement and Sections 3, 13, 15, 22, 26, and 28.

31. TERMINATION

A. Termination For Convenience

- i. Beginning one year after the Effective Date, Contractor may terminate this Agreement for its convenience, but only if the effective date of such termination is (a) December 31st, or (b) another date agreed to in writing by HCA. Contractor must give HCA written notice of its intent to terminate no later than sixty (60) Days prior to the effective date of termination. The written notice must include documentation from the board of directors or the legislative body governing Contractor indicating the authority to terminate the Agreement.
- ii. At any time, HCA, at its sole discretion, may terminate this Agreement in whole or in part by providing twenty-eight (28) Days written notice to Contractor.

B. Termination for Nonpayment

- i. If payment of an undisputed amount invoiced by HCA or an HCA contracted vendor is more than sixty (60) Days delinquent, Contractor will receive a written notice. If HCA or such vendor does not receive the entirety of the overdue amount from Contractor within thirty (30) Days of receipt of such notice, Contractor and each Enrollee may be disenrolled from PEBB Medical (including the PEBB Wellness Incentive Program), Dental, Life, and LTD insurance effective the last day of the last month for which full payment is received.
- ii. Upon disenrollment, HCA will send notification to both Contractor and each affected Enrollee. Any partial payment made by Contractor for the month of termination will be refunded by HCA to Contractor. Claims incurred by Enrollees after disenrollment will not be covered.
- iii. HCA reserves the right to recover from Contractor any expenses incurred by HCA as a result of Contractor's nonpayment of the monthly amount invoiced by HCA.

C. Termination for Cause

- i. In the event Contractor violates any material term or condition of this Agreement, including Exhibit A, fails to fulfill in a timely and proper manner its material obligations under this Agreement, HCA has the right to suspend or terminate this Agreement, in whole or in part.
- ii. HCA has the right to suspend or terminate this Agreement, in whole or in part, upon learning that Contractor provided false or incomplete information during the employer group application process.
- iii. If Contractor fails to apply the PEBB Rules, HCA shall give Contractor written notice of such failure. Upon receipt of such notice, HCA and Contractor will work together to develop a corrective action plan to cure such failure. The parties will have ten (10) Business Days to finalize such a plan, and HCA will have sole discretion to extend this period. If no agreed upon plan is developed in such period, HCA may terminate this Contract by written notice.
- iv. After a corrective action plan is approved, Contractor will have thirty (30) Days to implement such plan and apply the PEBB Rules as required under this Agreement. If Contractor's failure or violation is not so corrected, HCA may terminate this Agreement by written notice.

D. Parties' Responsibilities after Termination of Agreement

- i. Upon termination of this Agreement for any reason, Contractor will assume all responsibilities for maintaining benefits for its Employees, their dependents, and retirees as may be required by legal or contractual obligations Contractor may have to such Employees, dependents, or retirees.
- ii. Upon termination of this Agreement for any reason, Enrollees, or retirees included in the transfer unit when this Agreement took effect, cease to be eligible for Insurance Coverage as of the date the Agreement ends. Such Enrollees and retirees may not continue their enrollment in Insurance Coverage beyond the last day of the month in which the Agreement terminated.
- iii. If Contractor later decides it wants to again enroll Employees and their Dependents in Insurance Coverage, Contractor must re-apply and meet HCA's then existing employer group participation criteria.

32. IMMUNITY

Nothing in this Agreement shall be construed as a waiver (A) by HCA of the State of Washington's immunity under the 11th Amendment to the United States Constitution, or (B) by any Indian Nation of its sovereign immunity.

33. WAIVER

A failure by any party to enforce its rights under this Agreement will not be deemed a waiver by that party as to subsequent enforcement of rights. A waiver must be in writing, signed by an authorized representative for the waiving party, and identify which right(s) the party is waiving. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement.

**APPENDIX A
ELIGIBILITY RULES FOR CONTRACTOR**

The PEBB Rules that Contractor must use in determining the eligibility of Employees and Dependents for the PEBB Insurance Coverage are as follows:

- 1) Title 182 WAC, and
- 2) Any additional policies, procedures, or written guidance issued by the PEBB Program.

EXHIBIT A BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT is made between **Port of Edmonds** (Business Associate) and the Washington State Health Care Authority (HCA). This Agreement does not expire or automatically terminate except as stated in Section 5, Term and Termination.

This Agreement relates to all business relationships between the Business Associate and HCA, unless otherwise agreed. Business Associate is, or may be, a "Business Associate" of HCA as defined in the HIPAA Rules. If there is a conflict between the provisions of this Agreement and provisions of other contracts, this Agreement controls; otherwise, the provisions in this Agreement do not replace any provisions of any other contracts. If the other Contract is terminated, this Agreement nonetheless continues in effect.

This Business Associate Agreement supersedes any existing Business Associate Agreement the Business Associate may have with HCA. It also supersedes any "business associate" section in an underlying Contract.

1 DEFINITIONS

1.1 *Access Attempts*

Information systems are the frequent target of probes, scans, "pings," and other activities that may or may not indicate threats, whose sources may be difficult or impossible to identify, and whose motives are unknown, and which do not result in access or risk to any information system or Protected Health Information (PHI). Those activities are "Access Attempts."

1.2 *Day*

"Day" means business days observed by Washington State government.

1.3 *Catch-All Definitions*

The following terms used in this Agreement have the same meaning as those terms in the HIPAA Rules: Breach, Business Associate, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and Use.

1.4 *Clients or Individuals*

"Clients" or "Individuals" are people who have health or other coverage or benefits from or through HCA. They include Medicaid clients, Public Employees Benefits Board subscribers and enrollees, and others.

1.5 *Contract or Underlying Contract*

"Contract" or "Underlying Contract" means all agreements between Business Associate and HCA under which Business Associate is a "business associate" as defined in the

Security or Privacy Rules. The terms apply whether there is one such agreement or more than one, and if there is more than one the terms include them all even though a singular form is used except as otherwise specified. The terms include agreements now in effect and agreements that become effective after the effective date of this Agreement.

1.6 *Effective Date*

“Effective Date” means the date of the signature with the latest date affixed to the Agreement.

1.7 *HIPAA Rules; Security, Breach Notification, and Privacy Rules*

“HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as now in effect and as modified from time to time. In part 164 of title 45 CFR, the “Security Rule” is subpart C (beginning with §164.302), the “Breach Notification Rule” is subpart D (beginning with § 164.400), and the “Privacy Rule” is subpart E (beginning with § 164.500).

1.8 *Protected Health Information or PHI*

“Protected Health Information” has the same meaning as in the HIPAA Rules except that in this Agreement the term includes only information created by Business Associate or any of its contractors, or received from or on behalf of HCA, and relating to Clients. “PHI” means Protected Health Information.

2 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 *Continued Performance*

Business Associate’s Benefits Office will continue to perform its usual and customary assistance to HCA in administering employee benefits, including health coverage, for the agencies’ employees. Throughout performance, Business Associate will act in accordance with the HIPAA Privacy Rules.

2.2 *Limits*

Business Associate will not use or disclose PHI other than as permitted or required by the Contract or this Agreement or as required by law. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or as necessary for, purposes of the underlying Contract, if such use or disclosure of PHI would not violate the Privacy Rule if done by a Covered Entity and is the minimum necessary.

2.3 *Safeguards*

Business Associate will use appropriate safeguards, and will comply with the Security Rule with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Contract or this Agreement. Business Associate will store and transfer PHI in encrypted form.

2.4 Reporting Security Incidents

- 2.4.1 Business Associate will report security incidents that materially interfere with an information system used in connection with PHI. Business Associate will report those security incidents to HCA within five (5) Days of their discovery by Business Associate. If such an incident is also a Breach or may be a Breach, subsection 2.4 applies instead of this provision.
- 2.4.2 Access Attempts shall be recorded in Business Associate's system logs. Access Attempts are not categorically considered unauthorized Use or Disclosure, but Access Attempts do fall under the definition of Security Incident and Business Associate is required to report them to HCA.
- Since Business Associate's reporting and HCA's review of all records of Access Attempts would be materially burdensome to both parties without necessarily reducing risks to information systems or PHI, the parties agree that Business Associate will review logs and other records of Access Attempts, will investigate events where it is not clear whether or not an apparent Access Attempt was successful, and determine whether an Access Attempt:
- a. Was in fact a "successful" unauthorized Access to, or unauthorized Use, Disclosure, modification, or destruction of PHI subject to this Agreement, or
 - b. Resulted in material interference with Business Associate's information system used with respect to PHI subject to this Agreement, or
 - c. Caused an unauthorized Use or Disclosure.
- 2.4.3 Subject to Business Associate's performance as described in subsection 2.3.2., this provision shall serve as Business Associate's notice to HCA that Access Attempts will occur and are anticipated to continue occurring with respect to Business Associate's information systems. HCA acknowledges this notification, and Business Associate is not required to provide further notification of Access Attempts unless they are successful as described in subsection 2.3.2. above, in which case Business Associate will report them in accordance with subsection 2.3.1 or Section 2.4.

2.5 Breach Notification

- 2.5.1 "Breach" is defined in the Breach Notification Rule. The time when a Breach is considered to have been discovered is explained in that Rule. HCA, or its designee, is responsible for determining whether an unauthorized Use or Disclosure constitutes a Breach under the Breach Notification Rule, and for any notification under the Breach Notification Rule.
- 2.5.2 Business Associate will notify HCA of any unauthorized use or disclosure and any other possible Breach within five (5) Days of discovery. If Business Associate does not have full details at that time, it will report what information it has, and provide full details within fifteen (15) Days after discovery. The initial report may be oral. Business Associate will give a written report to HCA,

however, as soon as possible. To the extent possible, these reports must include the following:

- a. The identification of each individual whose PHI has been or may have been accessed, acquired, or disclosed;
- b. The nature of the unauthorized Use or Disclosure, including a brief description of what happened, the date of the event(s), and the date of discovery;
- c. A description of the types of PHI involved;
- d. The investigative and remedial actions the Business Associate or its subcontractor took or will take to prevent and mitigate harmful effects, and protect against recurrence;
- e. Any details necessary for a determination of the potential harm to Individuals whose PHI is believed to have been Used or Disclosed and the steps such Individuals should take to protect themselves; and
- f. Such other information as HCA may reasonably request.

2.5.3 If Business Associate determines that it has or may have an independent notification obligation under any state breach notification laws, Business Associate will promptly notify HCA. In any event, Business Associate will notify HCA of its intent to give any notification under a state breach notification law no fewer than ten (10) business Days before giving such notification.

2.5.4 If Business Associate or any subcontractor or agent of Business Associate actually makes or causes, or fails to prevent, a use or disclosure constituting a Breach within the meaning of the Breach Notification Rule, and if notification of that use or disclosure must (in the judgment of HCA) be made under the Breach Notification Rule, or RCW 42.56.590 or RCW 19.254.010, or other law or rule, then:

- a. HCA may choose to make any notifications to the individuals, to the Secretary, and to the media, or direct Business Associate to make them or any of them.
- b. In any case, Business Associate will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect clients (such as paying for regular credit watches in some cases), and
- c. Business Associate will compensate HCA clients for harms caused to them by the Breach or possible Breach described above.

2.5.5 Business Associate's obligations regarding breach notification survive the termination of this Agreement and continue for as long as Business Associate maintains the PHI and for any breach or possible breach at any time.

2.6 Subcontractors

Business Associate will ensure that any subcontractors or agents that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to protective restrictions, conditions, and requirements at least as strict as those that apply to the Business Associate with respect to that information. Upon request by HCA, Business Associate will identify to HCA all its subcontractors and provide copies of its agreements (including business associate agreements or contracts) with them. The fact that Business Associate subcontracted or otherwise delegated any responsibility to a subcontractor or anyone else does not relieve Business Associate of its responsibilities.

2.7 Access

Business Associate will make available PHI in a designated record set to the HCA as necessary to satisfy HCA's obligations under 45 CFR § 164.524. Business Associate will give the information to HCA within five (5) Days of the request from the individual or HCA, whichever is earlier. If HCA requests, Business Associate will make that information available directly to the individual. If Business Associate receives a request for access directly from the individual, Business Associate will inform HCA of the request within three (3) Days, and if requested by HCA it will provide the access in accordance with the HIPAA Rules.

2.8 Amending PHI

Business Associate will make any amendments to PHI in a designated record set as directed or agreed to by the HCA pursuant to 45 CFR § 164.526, or take other measures requested by HCA to satisfy HCA's obligations under that provision. If Business Associate receives a request for amendment directly from an individual, Business Associate will both acknowledge it and inform HCA within three (3) Days, and if HCA so requests act on it within ten (10) Days and inform HCA of its actions.

2.9 Accounting

Business Associate will maintain and make available to HCA the information required to provide an accounting of disclosures as necessary to satisfy HCA's obligations under 45 CFR § 164.528. If Business Associate receives an individual's request for an accounting, it will either provide the accounting as required by the Privacy Rule or, at its option, pass the request on to HCA within ten (10) Days after receiving it.

2.10 Obligations

To the extent the Business Associate is to carry out one or more of HCA's obligations under the Privacy Rule, it will comply with the requirements of that rule that apply to HCA in the performance of such obligations.

2.11 Books, etc.

Business Associate will make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

2.12 Mitigation

Business Associate will mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate or any of its agents or subcontractors in violation of the requirements of any of the HIPAA Rules, this Agreement, or the Contract.

2.13 Indemnification

To the fullest extent permitted by law, Business Associate will indemnify, defend, and hold harmless the State of Washington, HCA, and all officials, agents and employees of the State from and against all claims of any kind arising out of or resulting from the performance of this Agreement, including Breach or violation of HIPAA Rules.

3 PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 Limited Use and Disclosure

Except as provided in this Section 3, Business Associate may use or disclose PHI only as necessary to perform the services set forth in the Contract.

3.2 General Limitation

Business Associate will not use or disclose PHI in a manner that would violate the Privacy Rule if done by HCA.

3.3 Required by Law

Business Associate may use or disclose PHI as Required by Law.

3.4 De-Identifying

Business Associate may de-identified PHI in accordance with 45 CFR § 164.514(a)-(c).

3.5 Minimum Necessary

Business Associate will make uses and disclosures of only the minimum necessary PHI, and will request only the minimum necessary PHI.

3.6 Disclosure for Management and Administration of Business Associate

- 3.6.1 Subject to subsection 3.6.2, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.6.2 The disclosures mentioned in subsection 3.6.1 above are permitted only if either:
 - a. The disclosures are required by law, or
 - b. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and

used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and that the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3.7 Aggregation

Business Associate may use PHI to provide data aggregation services relating to the health care operations of the HCA, if those services are part of the Contract.

4 ACTIVITIES OF HCA

4.1 Notice of Privacy Practices

HCA will provide a copy of its current notice of privacy practices under the Privacy Rule to Business Associate upon request. HCA will also provide any revised versions of that notice by posting on its website, and will send it upon request.

4.2 Changes in Permissions

HCA will notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4.3 Restrictions

HCA will notify Business Associate of any restriction on the use or disclosure of PHI that HCA has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI. Business Associate will comply with any such restriction.

5 TERM AND TERMINATION

5.1 Term

- 5.1.1 This Agreement is effective as of the earliest of:
- a. The first date on which Business Associate receives or creates PHI subject to this Agreement, or
 - b. The effective date of the Contract, or if there is more than one Contract then the effective date of the first one to be signed by both parties.
- 5.1.2 This Agreement continues in effect until the earlier of:
- a. Termination of the provision of Services under the Contract or, if there is more than one Contract, under the last of the Contracts under which services are terminated,
 - b. The termination of this Agreement as provided below, or

- c. The written agreement of the parties.

5.2 Termination for Cause

HCA may terminate this Agreement and the Contract (or either of them), if HCA determines Business Associate has violated a material term of the Agreement. The termination will be effective as of the date stated in the notice of termination.

5.3 Obligations of Business Associate upon Termination

The obligations of the Business Associate under this subsection 5.3 survive the termination of the Agreement. Upon termination of this Agreement for any reason, Business Associate will:

- 5.3.1 Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- 5.3.2 Return to HCA or, if agreed to by HCA, destroy the PHI that the Business Associate and any subcontractor of Business Associate still has in any form (for purposes of this subsection 5.3, to destroy PHI is to render it unusable, unreadable, or indecipherable to the extent necessary to establish it is not Unsecured PHI, and Business Associate will provide HCA with appropriate evidence of destruction within ten (10) Days of the destruction);
- 5.3.3 Continue to use appropriate safeguards and comply with the Security Rule with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Agreement, for as long as Business Associate retains any of the PHI (for purposes of this subsection 5.3, if the PHI is destroyed it shall be rendered unusable, unreadable or indecipherable to the extent necessary to establish it is not Unsecured PHI. Business Associate will provide HCA with appropriate evidence of destruction);
- 5.3.4 Not use or disclose any PHI retained by Business Associate other than for the purposes for which the PHI was retained and subject to the same conditions that applied before termination;
- 5.3.5 Return to HCA, or, if agreed to by HCA, destroy, the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities; and
- 5.3.6 Business Associate's obligations relating to providing information to the Secretary and other government survive the termination of this Agreement for any reason.

5.4 Successor

Nothing in this Agreement limits the obligations of Business Associate under the Contract regarding giving data to HCA or to a successor Business Associate after termination of the Contract.

6 MISCELLANEOUS

6.1 Amendment

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

6.2 Interpretation

Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

6.3 HCA Contact for Reporting and Notification Requirements

Business Associate will address all reporting and notification communications required in this Agreement to:

HCA Privacy Officer
Washington State Health Care Authority
626 8th Avenue SE
PO Box 42700
Olympia, WA 98504-2700
Telephone: 360-725-1116
E-mail: PrivacyOfficer@hca.wa.gov