

COPY

**SECOND AMENDMENT TO
EMPLOYEE ASSISTANCE PROGRAM
SERVICES AGREEMENT**

The Employee Assistance Program Services Agreement (the "Agreement") between Health Promotion Network, a program of St. Joseph Hospital, an operating division of PeaceHealth (hereinafter "HPN"), and Whatcom Transportation Authority (hereinafter "Employer") dated April 1, 2003, is amended as follows:

1. Section 3 is replaced in its entirety as follows:

3. Confidentiality.

3.1 Health Information and Protected Health Information. The confidentiality of Participants and their individually identifiable health information will be protected in accordance with the requirements of state and federal laws. Both HPN and Employer shall treat individually identifiable health information pertaining to Participants, which shall include Protected Health Information, as defined below, as confidential and will take reasonable precautions to safeguard the privacy, security, and confidentiality of all Protected Health Information and other such individually identifiable health information in accordance with applicable state and federal law. All records of Participants are and will remain the property of HPN. For purposes of this Agreement, "Protected Health Information" shall have the same meaning as "protected health information" in 45 CFR § 164.501.

3.2 HPN Proprietary Information. During the Term of this Agreement, as defined below, Employer will receive and have access to Confidential Information (as defined below) of HPN. Employer shall hold HPN's Confidential Information in confidence, will take all reasonable precautions to safeguard all Confidential Information at all times so that it is not exposed to, or taken by, unauthorized persons, and will exercise its best efforts to ensure its safekeeping. During or after termination or expiration of this Agreement for any reason, Employer will not, directly or indirectly, use, disclose, or make available any Confidential Information to anyone outside HPN or Employer. Confidential Information received by Employer shall remain the property of HPN and, upon expiration or termination of this Agreement for any reason, or upon HPN's request prior to termination, Employer shall return to HPN all Confidential Information in Employer's possession.

For purposes of this Agreement, "Confidential Information" shall mean information disclosed to or accessed by Employer, not generally known in the relevant trade or industry, about HPN's business activities, services and processes, including but not limited to information concerning training manuals, computer programs, policies, procedures, processes, finances, accounting and reporting methods, treatments, trade secrets, contractual arrangements, and marketing strategies.

- 3.3 **Remedies.** Employer acknowledges that the use or disclosure of any Confidential Information, Protected Health Information, or Participant information in a manner inconsistent with this Agreement will cause HPN irreparable damage and that HPN shall have the right to equitable and injunctive relief to prevent the unauthorized use or disclosure, and to such damages as are occasioned by such unauthorized use or disclosure.
- 3.4 **Survival.** The provisions of this Section 3 shall survive the expiration or termination of this Agreement for any reason.

2. Section 4 is replaced in its entirety as follows:

4. **Uses and Disclosures for Plan Purposes.**

- 4.1 **Creation of Employee Assistance Plan.** The parties acknowledge that this Agreement and the provision of the Employee Assistance Services likely creates an employee welfare benefit plan ("Plan") as defined in the Employee Retirement Income Security Act and that Employer is the plan sponsor and the plan fiduciary of the Plan.
- 4.2 **Employer Uses and Disclosures of Protected Health Information.** HPN may provide certain individually identifiable information of Participants, including Protected Health Information, to Employer in Employer's capacity as the plan sponsor for the Plan. Employer, as the plan sponsor, may use and disclose Protected Health Information to administer the Plan, as described in the Permitted Uses and Disclosures Summary attached hereto as Exhibit C; provided, however, such uses and disclosures shall not exceed that which would be allowable for the Plan under the federal Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, "HIPAA"). A reference in this Agreement to HIPAA means the section as in effect or as amended.
- 4.3 **Employer's Obligations.** Employer, as plan sponsor, hereby certifies to HPN and the Plan that Employer agrees to:
- 4.3.1 Not use or further disclose the information other than as permitted or required by this Agreement or such other plan documents or as Required by Law, which shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- 4.3.2 Ensure that any agents, including a subcontractor, to whom it provided Protected Health Information received from the Plan agree to the same restrictions and conditions that apply to Employer, as plan sponsor, with respect to such information.

- 4.3.3 Not use or disclose the information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of **Employer**.
 - 4.3.4 Report to the Plan any use or disclosure of the information that is inconsistent with the uses and disclosures provided for in this Agreement of which it becomes aware.
 - 4.3.5 Make available Protected Health Information in accordance with 45 CFR § 164.524.
 - 4.3.6 Make available Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with 45 CFR § 165.526.
 - 4.3.7 Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528 and document such disclosures of Protected Health Information.
 - 4.3.8 Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from the Plan available to the Secretary of the Department of Health and Human Services for purposes of determining compliance by the Plan with HIPAA.
 - 4.3.9 If feasible, return or destroy all Protected Health Information received from the Plan that **Employer** still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
 - 4.3.10 Ensure that adequate separation between the Plan and **Employer**, as plan sponsor, is established pursuant to 45 CFR § 164.504(f)(2)(iii).
 - 4.3.11 Provide Participants with such notice of privacy practices as required pursuant to 45 CFR § 164.520.
- 4.4 Compliance with State and Federal Law. **Employer** shall comply, and shall ensure that the Plan complies, with HIPAA and other applicable state and federal confidentiality, privacy, and security laws. **Employer** shall not act or fail to act in a manner that would cause **HPN** to violate or not be in compliance with applicable state and federal law, including HIPAA. **Employer** acknowledges that it is not **HPN**'s responsibility or obligation to ensure that **Employer** and/or the Plan so comply.

4.5 Relationship.

4.5.1 No Authority. The relationship between HPN and Employer is purely contractual and neither HPN nor Employer, nor the employees, servants, agents or representatives of either, shall be considered the employee, servant, agent or representative of the other. As independent contracting parties, neither HPN nor Employer shall have any express or implied right or authority to assume or create any obligation on behalf of or in the name of the other party, except as specifically provided herein.

4.5.2 Fiduciary. HPN is not a fiduciary of the Plan and does not have any discretionary authority to make determinations regarding benefits under the terms of the Plan. Employer, or its designee, agrees that it is the plan sponsor, the plan administrator, and named fiduciary of the Plan.

4.6 Survival. The provisions of this Section 4 shall survive the expiration or termination of this Agreement for any reason.

3. A new Section 11 shall read as follows:

11. No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything in the Agreement confer, upon any person other than Employer or HPN and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

4. A new Section 12 shall read as follows:

12. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning to protect the privacy, security, and confidentiality of Protected Health Information and to permit HPN and the Plan to comply with HIPAA.

5. A new Exhibit C shall be a part of the Agreement in the form attached to this First Amendment and incorporated by reference herein.

All other terms and conditions remain as set forth in the Agreement.

This Amendment is executed, in duplicate original, as of the date of the last party to sign below.

Health Promotion Network
of St. Joseph Hospital/PeaceHealth

By: [Signature]

Its: VP, HR

Date: 4-10-03

Whatcom Transportation Authority

By: [Signature]

Its: GENERAL MANAGER

Date: 3/27/03

EXHIBIT C

Plan Sponsor's Permitted Uses and Disclosures of Protected Health Information

Plan sponsor, on behalf of the Plan, may use and/or disclose Protected Health Information for the following purposes:

1. Payment.
2. Determination of eligibility.
3. Determination or adjudication of benefits and claims procedures.
4. Assessment of the effectiveness of the Plan and services covered by the Plan.
5. Filing reports with state and federal government agencies.
6. Responding to inquiries by government and other agencies.
7. General administration of the Plan.