

EMPLOYEE ASSISTANCE PROGRAM SERVICES AGREEMENT

This Agreement (the "Agreement") is made and entered into by and between **Health Promotion Network**, a program of St. Joseph Hospital, an operating division of the Sisters of St. Joseph of Peace, Health and Hospital Services (hereinafter "**HPN**"), and **Whatcom Transportation Authority** (hereinafter "**Employer**").

RECITALS

WHEREAS, **HPN** is engaged in the business of providing Employee Assistance Program services; and

WHEREAS, **Employer** desires to engage **HPN** to provide the services described in this Agreement and **HPN** is willing to provide such services on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the parties agree as follows:

AGREEMENT

1. **HPN Services.** **HPN** shall provide employee assistance services to employees of **Employer** and their immediate family members (herein collectively "Participants") and to **Employer**. The employee assistance services to be provided by **HPN** are set forth in the Performance Summary attached hereto as Exhibit A.
2. **Billing: Payment for Services.** **Employer** shall pay **HPN** for the services in Exhibit A as follows: according to Exhibit B, "Fee Schedule", attached. Services that are invoiced will be referred to according to Exhibit A. **HPN** shall submit invoices to Employer on a monthly basis. **Employer** shall pay **HPN** within 30 days of receipt of the invoice.
3. **Confidentiality.** Confidentiality of Participants will be protected in accordance with the requirements of state and federal laws. All records of Participants will be held in a confidential manner and will remain the property of **HPN**.

4. Relationship. 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** or **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.

5. Term and Termination.

5.1 Term Date. This Agreement shall become effective on **January 1, 1999** and shall continue in effect through **December 31, 1999** unless terminated earlier as provided herein. Thereafter, this Agreement shall automatically renew for additional 12-month terms subject to the provisions of Section 5.2 below.

5.2 Termination. This Agreement shall terminate at the times and upon occurrence of any of the events described below:

5.2.1 With or without cause, upon thirty (30) days prior written notice to the other party.

5.2.2 At any time upon the mutual written agreement of the parties hereto.

6. Arbitration. In the event of any dispute under this Agreement, the parties agree to binding arbitration in Bellingham, Washington in accordance with the Commercial Arbitration Rules of the American Arbitration Association and with discovery being governed by the Federal Rules of Civil Procedure applicable in the United States District Court of the Western District of Washington. One arbitrator will be named by each party and a third neutral arbitrator will be named by the arbitrators so chosen. Judgement upon the award rendered by the arbitrators may be entered into the judgement docket of any court having jurisdiction thereof. The cost of arbitration shall be shared equally by the parties to it. Each party shall be solely responsible for its attorneys' fees, if any.

7. Indemnification. Each of the parties hereto agrees to be liable for its own conduct and to indemnify the other party against any and all losses therefore. In the event that loss or damage results from the conduct

of more than one party, each party agrees to be responsible for its own proportionate share of the claimant's damages under the laws of the State of Washington.

8. Entire Agreement. This Agreement, including all attachments hereto, contains the entire agreement and understanding between the parties and supersedes all prior agreements, understandings and representations relating to the subject matter of this Agreement. This Agreement may be amended at any time during the term hereof by the mutual written consent of all of the parties hereto.

9. Headings. The section headings used herein have been inserted for convenience or reference only and shall not in any way modify or restrict any of the terms or provisions hereof.

10. Governing Law. This Agreement and the rights and obligations created hereunder shall be governed by and construed in accordance with Washington law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate original as of the date of the last party to sign below.

Health Promotion Network

By Stephen Z. Churto
~~Nancy Bitting, Chief Executive~~
~~Officer of St. Joseph Hospital~~
CFO

Date 1/27/99

Whatcom Transportation
Authority

By Richard G. Walsh
Richard G. Walsh, General Manager

Date 12/28/98

Richard Langabeer
Richard Langabeer, Counsel to
the Authority

EXHIBIT A

HEALTH PROMOTION NETWORK PERFORMANCE SUMMARY

1. Services to include:
 - a. Initial consultation within 72 hours of request; (Emergency response possible when necessary as determined by contractor); no more than three visits (3 1/2 hrs total) per year per employee for assessment, referral, and follow-up to employees and their family members.
 - b. Referral to treatment or assistance resources congruent with clinical findings and provisions of individual health plan, which referrals shall be to qualified and licensed professionals in the area of expertise to which the request for assistance applies.
 - c. Consultation with supervisors regarding employee concerns, and assistance with voluntary and formal referral processes.
 - d. Systematic follow-up and evaluation of the usefulness and effectiveness of the consultations and referrals.
 - e. Ongoing communication with staff, dependents, and supervisors through brief orientation, brochures, posters, newsletters, and inservice meetings as needed.
 - f. Provision of monthly utilization data.
2. Supervisory training for all management and supervisory staff in the use of the Employee Assistance Program as a management tool.
3. Other activities as mutually agreed upon.
4. It is understood that HPN's scope of work under this contract does not include long-term or in-depth employee counseling or treatment, but is for the purpose of assisting the employee in brief focal counseling and in identifying other resource professionals qualified to treat or assist the employee with respect to his/her concerns or issues.

Exhibit B

HEALTH PROMOTION NETWORK EAP SERVICES FEE SCHEDULE

* This Fee Schedule Includes a 3% Discount for Employers
While they are Contracted with NWMB for their Employees' Health Insurance

PER EMPLOYEE

# EMPLOYEES	MONTHLY Rate per Employee	YEARLY Rate per Employee
22 - 49*	\$2.33	\$27.96
50 - 199	\$1.89	\$22.68
200 +	\$1.70	\$20.40

- * Minimum monthly fee for an employer is \$50
- * Billing will occur monthly, unless other previous arrangements are made.
- * Specific trainings or workshops (for example, in communication skills, stress management, or sexual harassment) will be billed at the fee-for-service rate of \$150 per hour, plus the cost of training materials.

* This fee will apply whether the WTA Contracts
with NWMB or group health for medical
insurance.

KGT / *[Signature]*
12/22/98

[Signature]
1/27/99

**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:

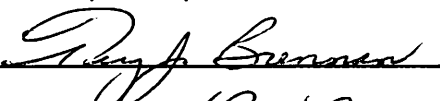
12. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning to protect the privacy, security, and confidentiality of Protected Health Information and to permit **HPN** and the Plan to comply with HIPAA.

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: 
Its: VP, HR
Date: 4/10-03

Whatcom Transportation Authority

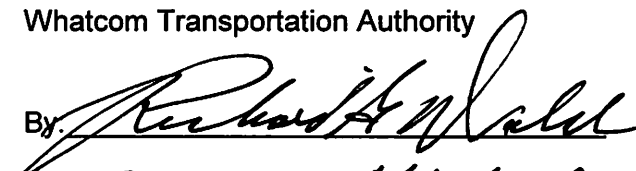
By: 
Its: GENERAL MANAGER
Date: 3/27/03

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.

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

between
HEALTH PROMOTION NETWORK
and
WHATCOM TRANSPORTATION AUTHORITY

The Employee Assistance Program Services Agreement (the "Agreement") between Health Promotion Network, a program of St. Joseph Hospital, an operating division of PeaceHealth ("HPN") and Whatcom Transportation Authority ("Employer") dated, January 1, 1999, is amended as follows:

1. Effective **March 1, 2004**, Exhibit B "Fee Schedule" is replaced in its entirety with the attached.

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

This Third 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: 

Its: VP, HR

Date: 2-27-04

Whatcom Transportation Authority

By: 

Its: GENERAL MANAGER

Date: 2-2-04

EXHIBIT B

HEALTH PROMOTION NETWORK EAP OFFICES IN BELLINGHAM AND BURLINGTON, WA

FEE SCHEDULE

Revised 12/03

(These rates include all services)

# of Employees	Monthly Rate Per Employee			Yearly Rate Per Employee		
	1 to 3 Session Model	1 to 4 Session Model	1 to 6 Session Model	1 to 3 Session Model	1 to 4 Session Model	1 to 6 Session Model
31 - 49	\$2.62	\$2.82	\$3.40	\$31.44	\$33.84	\$40.80
50 - 199	\$2.14	\$2.30	\$2.76	\$25.68	\$27.60	\$33.12
200 +	\$1.90	\$2.06	\$2.48	\$22.80	\$24.72	\$29.76

- Minimum fee per month is \$80
- Billing will occur monthly, unless other previous arrangements are made. Payment is due 30 days from receipt of invoice.
- There is a \$50 per trip travel fee assessed for services provided outside a 50 mile radius of Bellingham (this should be more cost effective for employers than building the fee into the standard fee structure).
- Specific staff development trainings or workshops (for example, in communication skills, stress management, or sexual harassment) will be billed at the fee-for-service rate of \$185.00* per hour, plus the cost of training materials. Workgroup Interventions (where a specific critical event or conflict between specific employees is the topic) and Employee & Supervisory Orientations are included in the base rate and excluded from the additional training fees.

*\$185/hr for contracted employers, \$200/hr for non-contracted employers.