

FLEX-PLAN SERVICES
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is entered into between Flex-Plan Services, Inc. ("Flex-Plan") and Whatcom Transportation Authority (Company Name) acting on behalf of the Whatcom Transportation Authority (Company Name) Health and Day Care Flexible Spending Arrangements (Health Flexible Spending Arrangement, Health Reimbursement Arrangement, or Dental and Vision Reimbursement Plan) (the "Plan") effective as of September 23, 2013. The parties intend to use this Agreement to satisfy the Business Associate Agreement requirements in the regulations at 45 CFR 164.308(b), 164.314(a), 164.502(e) and 164.504(e). The parties have entered into an Administrative Services Agreement under the terms of which Flex-Plan will provide certain services to the Plan and, in the performance of those services, will create, receive, maintain, transmit, use or disclose Protected Health Information on behalf of the Plan.

- I. **Definitions.** Terms used but not otherwise defined in this Agreement shall have the same meaning as the meaning ascribed to those terms in HIPAA, HITECH, and any current and future regulations or official guidance promulgated under HIPAA or HITECH.
- 1.1 **Breach.** "Breach" shall have the same meaning as the term "breach" in 45 CFR 164.402.
 - 1.2 **Business Associate.** "Business Associate" shall mean Flex-Plan Services, Inc. ("Flex-Plan").
 - 1.3 **Covered Entity.** "Covered Entity" shall mean Whatcom Transportation Authority (Company Name) Health and Day Care Flexible Spending Arrangements (Health Flexible Spending Arrangement, Health Reimbursement Arrangement, Dental and Vision Reimbursement Plan).
 - 1.4 **Electronic Protected Health Information.** "Electronic Protected Health Information" ("ePHI") shall have the same meaning as the term "electronic Protected Health Information" in 45 CFR 160.103.
 - 1.5 **HHS.** "HHS" shall mean the Department of Health and Human Services.
 - 1.6 **HIPAA.** "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996.
 - 1.7 **HITECH.** "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act.
 - 1.8 **Individual.** "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
 - 1.9 **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
 - 1.10 **Protected Health Information.** "Protected Health Information" ("PHI") shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - 1.11 **Required by Law.** "Required by Law" shall have the same meaning as the term "Required by Law" in 45 CFR 164.103.
 - 1.12 **Secretary.** "Secretary" shall mean the U.S. Secretary of the Department of Health and Human Services or his or her designee.
 - 1.13 **Security Incident.** "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR 164.304.
 - 1.14 **Security Rule.** "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subparts A and C.
 - 1.15 **Standards for Electronic Transactions Rule.** "Standards for Electronic Transactions Rule" means the final regulations issued by HHS concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.

- 1.16 *Subcontractor.* "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR 160.103.
- 1.17 *Unsecured Protected Health Information.* "Unsecured Protected Health Information" shall have the same meaning given the term "unsecured protected health information" in 45 CFR 164.402.

II. Obligations and Activities of Flex-Plan

- 2.1 Flex-Plan agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- 2.2 Flex-Plan agrees to take reasonable steps to limit the use, disclosure, and requests for, PHI to the Minimum Necessary to accomplish the intended purpose. The Minimum Necessary standard does not apply to: 1) disclosures or requests by a health care provider for treatment purposes; (2) disclosures to the Individual who is the subject of the information; (3) uses or disclosures made pursuant to an Individual's authorization; (4) uses or disclosures required for compliance with HIPAA; (5) disclosures to HHS when disclosure of information is required under the Privacy Rule for enforcement purposes; (6) uses or disclosures that are required by other law.
- 2.3 Flex-Plan agrees to develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of PHI and comply with applicable requirements under the Security Rule.
- 2.4 Flex-Plan shall notify Covered Entity of any Breach of Unsecured PHI of which it becomes aware. Such notice shall include, to the extent possible, the information listed in 2.4.2. A Breach shall be treated as discovered as of the first day on which such Breach is known to Flex-Plan, other than the individual committing the Breach, or should reasonably have been known to Flex-Plan to have occurred.
- 2.4.1 Notice shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a Breach by Flex-Plan.
- 2.4.2 Notice of a Breach shall include, to the extent possible the following:
- (i) Identification of each individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired, used, or disclosed as a result of the breach.
 - (ii) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known.
 - (iii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, or account number).
 - (iv) The steps Individuals should take to protect themselves from potential harm resulting from the Breach.
 - (v) A brief description of any action taken to investigate the Breach, mitigate losses, and to protect against any further Breaches.
 - (vi) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- 2.4.3 If a law enforcement official determines that a notification or notice would impede a criminal investigation or cause damage to national security, such notification, notice or posting shall be delayed in the same manner as provided under 45 CFR 164.528(a)(2).
- 2.4.4 Flex-Plan will provide notice of Breach to the Individual(s) affected and such notice shall include, to the extent possible, the information listed in 2.4.2, unless, upon occurrence of a Breach, Covered Entity requests to disseminate or Flex-Plan and Covered Entity agree that Covered Entity will disseminate the notice(s). Any notice provided by Covered Entity to the Individual(s) shall comply with the content requirements listed in section 2.4.2., as well as

any requirements provided under HIPAA, HITECH, and other applicable government guidance.

- 2.5 Flex-Plan agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement and/or any Security Incident of which it becomes aware.
- 2.6 Flex-Plan shall require each of its subcontractors, agents, or brokers to whom Flex-Plan provides PHI on behalf of the Plan to agree in writing to be bound by the same restrictions and conditions that apply to Flex-Plan, with respect to such information.
- 2.7 Flex-Plan agrees to make internal practices, books, and records, including policies and procedures and PHI relating to the use and disclosure of PHI received from, or created or received by Flex-Plan on behalf of, the Covered Entity available to the Secretary, within ten (10) business days after receipt of written request or otherwise as designated by the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- 2.8 Flex-Plan agrees to document disclosures of PHI and information related to such disclosures as required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Flex-Plan will not be obligated to record disclosures of PHI or otherwise account for disclosures of Covered Entity's PHI if Covered Entity need not account for such disclosures.
- 2.9 Flex-Plan agrees to provide to Covered Entity or to an Individual, within ten (10) business days after receipt of written request, information collected in accordance with Section 2.8 of this Agreement, in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- 2.10 Flex-Plan agrees to provide access, at the request of Covered Entity and within ten (10) business days after receipt of written request, to PHI in the custody and control of Flex-Plan in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. If PHI is maintained in a Designated Record Set electronically, and an electronic copy of such PHI is requested, Flex-Plan will provide an electronic copy in the form and format requested if it is readily producible in such form and format. If it is not readily producible in such format, Flex-Plan will work with the Covered Entity or individual to determine an alternative form and format that enable the Plan to meet its electronic access obligations under 45 CFR 164.524.
- 2.11 Flex-Plan agrees to make any amendment(s) to PHI in a Designated Record Set in the custody or control of Flex-Plan within ten (10) business days after receiving written request from the Covered Entity or as requested in writing by an Individual pursuant to 45 CFR 164.526.
- 2.12 In the event that Flex-Plan transmits or receives any Covered Electronic Transaction on behalf of the Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent Required by Law, and shall ensure that any agents that assist Flex-Plan in conducting Covered Electronic Transactions on behalf of the Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent Required by Law.
- 2.13 Flex-Plan shall not directly or indirectly receive payment in exchange for any PHI of an Individual unless Covered Entity or Flex-Plan received a valid authorization from the Individual, in accordance with 45 CFR 164.508, unless permitted under the HIPAA rules.
- 2.14 Flex-Plan shall not use PHI for marketing purposes without a valid authorization from the affected Individuals, unless such communication is permitted under the HIPAA rules.
- 2.15 Flex-Plan shall not use or disclose genetic information for underwriting purposes in violation of the HIPAA rules.

III. Permitted Uses and Disclosures by Business Associate

- 3.1 Except as otherwise limited in this Agreement, Flex-Plan may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity related to the Administrative Services Agreement between Flex-Plan and Covered Entity.

- 3.2 Except as otherwise limited in this Agreement, Flex-Plan may disclose PHI for the proper management and administration of Flex-Plan, provided that such disclosures are Required by Law, or Flex-Plan obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Flex-Plan of any instance of which it is aware in which the confidentiality of the information has been Breached.
- 3.3 Except as otherwise limited in this Agreement, Flex-Plan may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 3.4 Except as otherwise limited in this Agreement, Flex-Plan may use PHI for the proper management and administration of Flex-Plan or to carry out the legal responsibilities of Flex-Plan.
- 3.5 Flex-Plan may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 164.502(j)(1).

IV. Obligations of Covered Entity

- 4.1 Covered Entity shall notify Flex-Plan of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Flex-Plan's use or disclosure of PHI.
- 4.2 Covered Entity shall notify Flex-Plan of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Flex-Plan's use or disclosure of PHI.
- 4.3 Covered Entity shall notify Flex-Plan of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Flex-Plan's use or disclosure of PHI.

V. Permissible Requests by Covered Entity

- 5.1 Covered Entity shall not request Flex-Plan to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except for uses or disclosures for the purposes of data aggregation, management, and administrative activities of Flex-Plan.

VI. Term and Termination

- 6.1 *Term.* This Agreement shall be effective as of the date that it is entered into, and shall terminate when all of the PHI provided by Covered Entity to Flex-Plan, or created or received by Flex-Plan on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 *Termination for Cause.* Upon Covered Entity's knowledge of a material breach of the terms hereof by Flex-Plan, Covered Entity shall provide written notice to Flex-Plan of the material breach, and Flex-Plan shall have the opportunity to cure that breach within the time period reasonably required to cure that breach. In the event that Flex-Plan does not cure the breach or end the violation within that time period, then Covered Entity shall be entitled to provide notice of termination of the terms hereof.
- 6.3 *Effect of Termination.* It is agreed that due to the manner in which PHI is retained and the retention requirements of the Internal Revenue Service, returning or destroying all of the PHI received from Covered Entity or created or received by Flex-Plan on behalf of Covered Entity, is infeasible. Therefore, Flex-Plan shall extend the protections of this Agreement to such PHI, and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Flex-Plan maintains such PHI.

VII. Miscellaneous

- 7.1 *Definitions.* Terms used, but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations and other official government guidance.

- 7.2 *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 7.3 *Amendment.* This Agreement shall automatically amend to incorporate changes by Congressional act or by regulations of the Secretary that affect Business Associate or Covered Entity's obligations under this Agreement.
- 7.4 *Survival.* The respective rights and obligations of Flex-Plan under this Agreement shall survive the termination of the term of this Agreement.
- 7.5 *No Third-Party Rights.* Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns any rights, remedies, obligations or liabilities whatsoever.
- 7.6 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Washington to the extent not preempted by the Privacy and Security Rules or other applicable federal law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first stated above.

Flex-Plan Services, Inc.

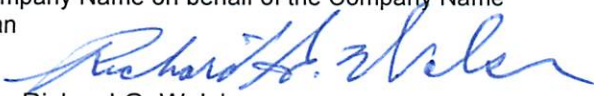
By: 
Tina Davis

Title: Privacy Officer

Date: 8/22/2013

Covered Entity:

Company Name on behalf of the Company Name
Plan


By: Richard G. Walsh

Title: General Manager

Date: 8-30-13