

### 10.03 Other Contacts

The following is a list of key contacts (persons or offices) responsible for responding to Participants exercising their rights described in Section 5; for receiving complaints concerning the Plan's compliance with the Manual or with the HIPAA Privacy Rule; and for processing any specific Authorizations that Participants may be asked to provide concerning the use of their PHI.

- Inspection Contact

Name:	Human Resources – Benefits Department
Address:	3715 Oakes Avenue, Everett, WA 98201
Phone:	(425) 388-4710
Fax:	(425) 388-4713
Email:	

- Amendment Contact

Name:	Human Resources – Benefits Department
Address:	3715 Oakes Avenue, Everett, WA 98201
Phone:	(425) 388-4710
Fax:	(425) 388-4713
Email:	

- Restriction Contact

Name:	Human Resources – Benefits Department
Address:	3715 Oakes Avenue, Everett, WA 98201
Phone:	(425) 388-4710
Fax:	(425) 388-4713
Email:	

- Communications Contact

Name:	Human Resources – Benefits Department
Address:	3715 Oakes Avenue, Everett, WA 98201
Phone:	(425) 388-4710
Fax:	(425) 388-4713
Email:	

- Disclosure Contact

Name:	Human Resources – Benefits Department
Address:	3715 Oakes Avenue, Everett, WA 98201
Phone:	(425) 388-4710
Fax:	(425) 388-4713
Email:	

- Complaint Manager

Name:	Human Resources – Benefits Department
Address:	3715 Oakes Avenue, Everett, WA 98201
Phone:	(425) 388-4710
Fax:	(425) 388-4713
Email:	

- Authorization Contact

Name:	Human Resources – Benefits Department
Address:	3715 Oakes Avenue, Everett, WA 98201
Phone:	(425) 388-4710
Fax:	(425) 388-4713
Email:	

## 10.04 Business Associate Agreements

### a. Model Business Associate Agreement

#### Directions to the Plan's Administrator for Using Model Business Associate Agreement

**General Comments.** This model HIPAA Business Associate Agreement is designed to be an addendum to an existing contract between Everett School Employee Benefit Trust and its third party vendor. It should be modified if it will be used as a stand-alone contract (i.e., there is no existing contract), or for insertion into the body of a contract.

**Select Instructions:**

**Section 3.0(b).** This section is optional. Most vendors will likely request the authority to engage in the specific uses and disclosures discussed therein.

**Section 4.0(a) and (b).** The Plan's Administrator will need to modify this subsection if it delegated to the Business Associate its obligation to produce and provide Privacy Notices.

**Section 6.0(a).** For written contracts (i) in effect before October 15, 2002, and (ii) not renewed or modified before April 14, 2003, Everett School Employee Benefit Trust has until the earlier of the date of renewal or modification, or April 14, 2004, to amend such contracts. If conditions (i) and (ii) are not satisfied, then the contract must be amended by April 14, 2003.

**Section 7.0(f).** Conform this section to the existing contract with this vendor unless that contract does not specify the law of which state will govern the contract.

**Section 7.0(g).** Modify this section if the existing contract does not include any provision regarding indemnification or performance guarantees, or if application of those provisions requires additional statements in this section.



## SAMPLE HIPAA PRIVACY BUSINESS ASSOCIATE AGREEMENT

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the **Board of Trustees (Plan Sponsor)**, acting on behalf of **Everett School Employee Benefit Trust** (the "Plan") and **[Name of Vendor]** ("Business Associate"). The Agreement is incorporated into the **[Name of Vendor Contract]** between the Plan and Business Associate, dated **[Date of Contract]** (the "Contract"). The parties intend to use this Amendment to satisfy the Business Associate contract requirements in the regulations at 45 CFR 164.502(e) and 164.504(e), issued under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

### 1.0 Definitions

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501. Notwithstanding the above, "Covered Entity" shall mean **[Name of Covered Entity/Plan]**; "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g); "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee; and "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.

### 2.0 Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by Section 3.0 of this Agreement, or as Required by Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- (f) Business Associate agrees to provide access, at the request of Covered Entity or an Individual, and in a prompt and reasonable manner consistent with the HIPAA regulations, to Protected Health Information in a Designated Record Set, to the Covered Entity or directly to an Individual in order to meet the requirements under 45 CFR 164.524.
- (g) Business Associate agrees to make any Amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity or an Individual directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in a prompt and reasonable manner consistent with the HIPAA regulations.
- (h) Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity, to the Secretary in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (i) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) Business Associate agrees to provide to Covered Entity or an Individual an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, in a prompt and reasonable manner consistent with the HIPAA regulations.
- (k) Business Associate agrees to satisfy all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, at 45 CFR Part 162 no later than October 16, 2003. Business Associate further agrees to ensure that any agent, including a subcontractor, that conducts standard transactions on its behalf will comply with the EDI Standards.
- (l) Business Associate agrees to determine the Minimum Necessary type and amount of PHI required to perform its services and will comply with 45 CFR 164.502(b) and 514(d).

### **3.0 Permitted or Required Uses and Disclosures by Business Associate**

- (a) General Use and Disclosure. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract and



in this Agreement, provided that such use or disclosure of Protected Health Information would not violate the Privacy Rule, including the Minimum Necessary requirement, if done by Covered Entity. **[If not specified in the Contract, consider adding provisions clearly obligating Business Associate to share Protected Health Information for permitted purposes, such as for audits performed by Business Associates or Everett School Employee Benefit Trust.]**

(b) Additional use and disclosure.

- (i) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (ii) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that such disclosures are required by law, or Business Associate 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (iii) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (iv) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

**4.0 Obligations of Covered Entity to Inform Business Associate of Covered Entity's Privacy Practices, and any Authorization or Restrictions.**

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, Authorization by Individual or his or her personal representative to use or disclose Protected Health Information, if such changes affect Business Associate's uses or disclosures of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, if such changes affect Business Associate's uses or disclosures of Protected Health Information.

## 5.0 Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## 6.0 Term and Termination

- (a) *Term.* The Term of this Agreement shall be effective as of April 14, 2003 [there may be a different date depending on when Everett School Employee Benefit Trust renews its contract], and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) *Termination for Cause.* Without limiting the termination rights of the parties pursuant to the Contract, and upon Covered Entity's knowledge of a material breach by Business Associate of a provision under this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate the Contract if Business Associate has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (c) *Effect of Termination.* The parties mutually agree that it is essential for Protected Health Information to be maintained after the expiration of the Agreement for regulatory and other business reasons. The parties further agree that it would be infeasible for Covered Entity to maintain such records because Covered Entity lacks the necessary system and expertise. Accordingly, Covered Entity hereby appoints Business Associate as its custodian for the safe keeping of any record-containing Protected Health Information that Business Associate may determine it is appropriate to retain. Notwithstanding the expiration or termination of the Contract, Business Associate shall extend the protections of this Addendum to such Protected Health Information, and limit further use or disclosure of the Protected Health Information to those purposes that make the return or destruction of the Protected Health Information infeasible.

## 7.0 Miscellaneous

- (a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.



- (b) *Amendment.* Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either party may, by written notice to the other party, amend the Contract and this Agreement in such manner as such party determines necessary to comply with such law or regulation. If the other party disagrees with such Amendment, it shall so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an Amendment within thirty (30) days thereafter, then either of the parties may terminate the Contract on thirty (30) days written notice to the other party. [May be modified to fit parties' wishes.]
- (c) *Survival.* The respective rights and obligations of Business Associate under Section 6.0 of this Agreement shall survive the termination of this Addendum.
- (d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
- (e) *No third party beneficiary.* Nothing expressed or implied in this Agreement or in the Contract is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assignees of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- (f) *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 Rules or other applicable federal law.
- (g) *Indemnification and performance guarantees.* The indemnification and performance guarantee provisions contained in the Contract shall also apply to this Agreement.

By: \_\_\_\_\_  
Chairperson, Board of Trustees on behalf of  
Everett School Employee Benefit Trust

By: \_\_\_\_\_  
[Name of Vendor]



**b. Log of Business Associate Agreements**

<b>Vendor name</b>	<b>Agreement date</b>	<b>Expiration date</b>	<b>Storage location</b>	<b>Description of agreement (including Plan names)</b>
Everett School District No. 2	April 14, 2003	Evergreen	Human Resources Benefits Department	Requires all HIPAA compliance as outlined under HIPAA privacy requirements.
Flex-Plan Services, Inc.	April 14, 2003	Evergreen	Human Resources Benefits Department	Requires all HIPAA compliance as outlined under HIPAA privacy requirements.
Mercer Human Resources Consulting	April 14, 2003	Evergreen	Human Resources Benefits Department	Requires all HIPAA compliance as outlined under HIPAA privacy requirements.
Safeco	April 14, 2003	Evergreen	Human Resources Benefits Department	Requires all HIPAA compliance as outlined under HIPAA privacy requirements.
Margaret Templeton	April 14, 2003	Evergreen	Human Resources Benefits Department	Requires all HIPAA compliance as outlined under HIPAA privacy requirements.
Zenith Administrators	April 14, 2003	Evergreen	Human Resources Benefits Department	Requires all HIPAA compliance as outlined under HIPAA privacy requirements.

## 10.05 Insurers

The following is a list of the Plan(s) Insurers:

Insurer	Policy identifying information	Storage location
Ceridian Corporation (EAP LifeBalance Program)	Services Agreement	Copy of Agreement held in Human Resources
Willamette Dental of Washington (formerly Columbia Dental Plan)	Group Plan #W002	Copy of Policy held in Human Resources
Group Health Corporation	Group Plan #0026100	Copy of Policy held in Human Resources
PacifiCare HMO	Group Plan #804139	Copy of Policy held in Human Resources
UNUM (Long Term Care Program)	Policy #220302	
Washington Dental Service	Group Plan #0186	Copy of Policy held in Human Resources