

Project title: Authorize the Mayor to Sign the Agreement with Accrue Solutions for COBRA administration services.

Council Bill #

Agenda dates requested:
5/5/21

Briefing
Proposed action
Consent 5/5/21
Action
Ordinance
Public hearing
Yes No

Budget amendment:
Yes No

PowerPoint presentation:
Yes No

Attachments:

Department(s) involved:
HR

Contact person:
Kandy Bartlett

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Initialed by:

Department head

Administration

Council President

Consideration: Approve the Agreement with Accrue Solutions

Project: COBRA Administration

Partner/Supplier: Accrue Solutions

Preceding action:

Fund: 508-3729502000

Fiscal summary statement:

The approximate annual cost will be \$13,000 based on eligible employee population. In addition, the City will no longer receive the annual 2% administrative fee based on participant enrollment estimated to be approximately \$3800.

Project summary statement:

The Agreement with Accrue Solutions will provide total COBRA administration and compliance services for the City's eligible health insurance plans. This specialized service is needed to manage the city's COBRA program.

Recommendation (exact action requested of Council): Authorize the Mayor to sign the agreement with Accrue Solutions for COBRA administration services.



Presented to: City of Everett

Presented By:

**Accrue Solutions, LLC
866-517-7580**

Effective: 05/01/2021

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This COBRA Administration Agreement (this “**Agreement**”) is entered into by and between Accrue Solutions, LLC (“**AS**”) and City of Everett (the “**Employer**”).

Preamble

The **Employer** maintains one or more group health **Plans** that the **Employer** has determined are subject to the group health **Plan** continuation requirements of Federal law, commonly known as “**COBRA**.”

COBRA imposes obligations on the **Employer** in its capacities as **Employer**, **Plan** sponsor and **Plan** administrator. The **Employer** desires to engage **AS** to assist the **Employer** to comply with the requirements of **COBRA**.

Agreement

On the terms and subject to the conditions described in this document, the **Employer** and **AS** agree as follows:

Section I: Definitions and Terms Used in the Agreement

Unless the context otherwise requires, capitalized terms used in this Agreement, its Addenda and Schedules have the same meaning as ascribed to them in this Section I.

“**Account Reconciliation**” is the process whereby **AS** receives the monthly billing/eligibility statement(s) from the **Carrier(s)** and verifies that all participant eligibility records have been updated correctly and, if applicable, that the **Monthly Contribution Amount** paid by the **Qualified Beneficiary** is properly credited to each **Plan**.

“**Agreement**” means this **COBRA** Administration Agreement, its Addenda and Schedules, including **Schedule A** and, if included, Addendum 3, as any of them may be amended in the future.

“**Carrier**” means (a) any company that acts as an insurer or (b) a self-insured **Plan**.

“**Employer Application**” means the “**AS** Employer Application” provided to the **Employer** for completion by the **Employer** prior to the initial account setup by **AS**. In addition to the information needed to establish various **Plan** parameters, **Monthly Contribution Amounts** and setup any existing **Qualified Beneficiaries**, or other **Plan** participants, in the **AS** systems, the **Employer** also selects any optional services to be routinely provided by **AS** and acknowledges the **Employer**’s acceptance of the fees, and their terms, in the proposal issued by **AS**.

“**COBRA**” means the group health plan continuation coverage provisions set forth in section 4980B of the Internal Revenue Code of 1986, sections 601 thru 608 of **ERISA**, sections 2201 through 2208 of the Public Health Services Act, and the regulations promulgated thereunder.

“**Continuation Coverage**” means the extended group health plan coverage required by **COBRA**.

“**Election Notice**” means the notice of the right to elect **Continuation Coverage** the **Plan** administrator provides to **Qualified Beneficiaries** as required by **COBRA**.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**FSA**” means Flexible Spending Accounts under IRC Sec 125, 129 & 132 Includes Medical, Daycare, Commuter & Parking.

“**General Notice**” means the general notice of continuation coverage that the **Plan** administrator provides to covered employees and covered spouses as required by **COBRA**.

“**Grace Period**” means the period within which the **Monthly Contribution Amount(s)** must be paid in full by or on behalf of a **Qualified Beneficiary**. “**Grace Period**” includes the 45-day period that begins when a **Qualified Beneficiary** elects **Continuation Coverage** (within which the initial contribution of required **Monthly Contribution Amounts** must be made). Thereafter, unless the **Employer** directs otherwise, the **Grace Period** for any month of **Continuation Coverage** is the period that ends 30 days after the first day of that month.

“**HIPAA**” means the group health plan portability provisions or the administrative simplification provisions, as applicable, of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations thereunder.

“**HITECH**” means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy) and the regulations thereunder.

“**IIHI**” or “individually identifiable health care information” means information, including demographic data, that relates to:

- the individual’s past, present or future physical or mental health or condition,
- the provision of health care to the individual, or
- the past, present, or future payment for the provision of health care to the individual

and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).

“**HRA**” means Health Reimbursement Arrangement under IRC Section 105

“**HSA**” means Health Savings Account

“**Monthly Contribution Amount**” means the amount that must be contributed by or on behalf of a **Qualified Beneficiary** for a month of **Continuation Coverage**.

“**Notice of Qualifying Event**” means the notice provided by a covered employee or **Qualified Beneficiary** to the **Plan** administrator of a **Qualifying Event** that is attributable to a divorce, legal separation, or dependent child’s loss of dependent status, as required by **COBRA**.

“**Notice of Termination**” means the notice of termination of continuation coverage described in Department of Labor Regulation §2590.606-4(d).

“**Plan**” means the group health **Plan(s)** the **Employer** identifies in writing to **AS**.

“**Qualified Beneficiary(ies)**” means the qualified beneficiary within the meaning of **COBRA**, generally a covered employee, a covered employee’s spouse or former spouse, or a covered employee’s dependent child who has lost coverage under the **Plan** due to one of the events described in **COBRA** and is either eligible for **Continuation Coverage** or has elected **Continuation Coverage** (which has not terminated).

“**Qualifying Event**” means a qualifying event within the meaning of **COBRA**, generally, that a **Qualified Beneficiary** has lost or will lose coverage under the **Plan**, due to:

- the termination (for reasons other than gross misconduct), or reduction in hours, of a covered employee’s employment;
- a covered employee has died;
- a covered employee has become entitled to Medicare (whether Part A or Part B);
- a covered employee has become divorced or legally separated;
- a child of a covered employee has lost status as a dependent under the **Plan**; or
- **Employer’s** bankruptcy (relating to a loss of coverage of retirees or their spouses or dependent children).

“**Summary of Benefits and Coverage**” means the summary of benefits and coverage within the meaning of section 2715 of the Public Health Service Act, 42 U.S.C. §300gg-15.

“**Schedule A**” means the page titled **Schedule A – Selected Services and Fees** in this **Agreement** that itemizes the standard services, fees and charges, for a designated period of time, provided by **AS** to the **Employer**, as well as any optional services that are available to and/or chosen by the **Employer**, subject to the terms and conditions of this **Agreement**.

-----End of Section I -----

Section II: General Provisions

1. The **Employer** acknowledges that it is the “**Employer**,” “**Plan** sponsor,” and “**Plan** administrator” of the **Plan** for purposes of **COBRA**, **ERISA**, the Internal Revenue Code and the Public Health Services Act, and that the **Employer** retains the full responsibility under the law for its and the **Plan**’s compliance with **COBRA**.
2. The **Employer** has final authority to decide all questions, including matters of clerical error, or concerning **Qualified Beneficiaries**’ eligibility for **Continuation Coverage** under the **Plan**.
3. The **Employer** has the absolute authority with respect to the control, management, investment, or disposition and utilization of all **Plan** assets, if any; and **AS** shall neither have nor be deemed to exercise any discretion, control, or authority with respect to the disposition of any **Plan** assets.
4. The **Employer** has the sole responsibility and authority for the design, funding, and operation of the **Plan**, and for its compliance with **ERISA** and all applicable laws.
5. The **Employer**, the **Plan**, the **Plan**’s administrator, their agents or assigns, and not **AS**, is solely responsible for the review and payment of claims for benefits under the **Plan** and all appeals under **ERISA**, including, without limitation, with respect to claims,

benefits and eligibility determinations under the **Plan**.

6. The **Employer** shall establish reasonable procedures for the furnishing of certain **COBRA** notices by a covered employee or **Qualified Beneficiary** as required by Department of Labor Regulation §2590.606-3(b). The reasonable procedures shall require all covered employees and **Qualified Beneficiaries** to provide to **AS** (on behalf of the **Plan** administrator) all four **COBRA** notices governed by the Department of Labor's **COBRA** notice regulations (*i.e.*, the **Notice of Qualifying Event**, notice of disability determination, notice of occurrence of a second qualifying event, and notice of change in disability status) within the minimum notice periods permitted under **COBRA**. Among other things, this regulation requires the **Employer** to timely distribute an **ERISA**-compliant summary plan description that includes these reasonable procedures to employees covered by the **Plan** and to **Qualified Beneficiaries**. The form and contents of these reasonable procedures must be consistent with the responsibilities assigned to the **Employer** and to **AS** under this **Agreement**.
7. The **Employer** has the responsibility to pay, or to cause to be paid, all excise taxes required under Internal Revenue Code section 4980B, as and when required, and to file, or to cause to be filed, IRS Form 8928, as and when required.
8. The **Employer** will promptly furnish to **AS** such records and information in its possession or control as **AS** may request to perform its obligations under this **Agreement**. The **Employer** has full responsibility and holds **AS** harmless if incorrect information is provided to **AS** by the **Employer**, its employees or its representatives, including **Carriers**. This includes, but is not exclusive to, **Monthly Contribution Amounts**.
9. In performing its duties and responsibilities pursuant to the **Agreement**, **AS** acts as the agent of the **Employer** and at the direction of the **Employer**. **AS** is not the "**Plan** administrator" or a "named fiduciary" (as those terms are defined in **ERISA**, the Internal Revenue Code, or the Public Health Services Act) with respect to the **Plan**.
10. **AS** has no responsibility for the payment or reimbursement of any health care claims.
11. **AS**'s duty and responsibility is limited to assisting the **Employer** with compliance with the **Employer**'s responsibilities under **COBRA** as and only to the extent described in this **Agreement**. Any other requirements imposed by the **Employer** or the **Plan(s)** are not the responsibility of **AS**.
12. **AS** is not "a person who is responsible . . . for administering or providing benefits under the **Plan**" within the meaning of Internal Revenue Code section 4980B (e)(1)(B). **AS** is not responsible for the payment of excise taxes imposed under Internal Revenue Code section 4980B and is not responsible for the preparation or filing of Internal Revenue Service Form 8928. **AS** shall provide such information as **Employer** reasonably requests in order to calculate excise taxes imposed under Internal Revenue Code section 4980B or to prepare IRS Form 8928.
13. Unless otherwise notified in writing, **AS** will be entitled to conclusively presume that a **Qualified Beneficiary**'s eligibility for **Continuation Coverage** under the **Employer**'s **Plan(s)** has not terminated by reason of coverage under another group health **Plan** or by becoming eligible for Medicare.
14. **AS** is authorized to modify its internal procedures or processes in order to comply with **COBRA** or obtain administrative efficiencies. Any changes that impact the processes or responsibilities of the **Employer** will be communicated in a timely manner.
15. **AS** shall maintain and archive all pertinent **COBRA** data for as long as the **Agreement** is in effect plus an additional 7 years for terminated accounts.
16. Including the issuance of a replacement **Schedule A** pertaining to a change in fees as described in Section VIII: Fees and Charges, this **Agreement** may only be amended in writing and signed by an officer of each party.

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17. Failure by the **Employer** or **AS** to insist upon compliance with any provision of the **Agreement** at any time or under any given set of circumstances shall not operate to waive or modify such provision or in any manner render it unenforceable, as to any other time or as to any other occurrence, whether or not the circumstances are the same.
18. No waiver of any of the terms and conditions of this **Agreement** shall be valid unless contained in a written memorandum and signed by an officer of the waiving party.
19. This **Agreement** is the final and complete **Agreement** between the parties on the subject matter hereof and supersedes all prior or contemporaneous negotiations or **Agreements**, written or oral, regarding such subject matter.
20. No assignment by any party pertaining to this **Agreement** shall be valid without the consent of the other party.
21. Unless superseded by Federal law, the laws of the State of Washington shall govern this **Agreement**.
22. The scope of **AS**'s services includes **Qualified Beneficiaries** who are receiving **COBRA** coverage at the **Effective Date** of this **Agreement**, as well as **Qualified Beneficiaries** who experience **Qualifying Events** on or after the **Effective Date** of this **Agreement**.
23. This **Agreement** is not intended to confer, and does not confer, upon any non-party (including any covered employee or **Qualified Beneficiary**) any rights or remedies. Any covenant, representation, or warranty made by **AS** in this **Agreement** is made to **Employer** alone. Any covenant, representation, or warranty made by **Employer** in this **Agreement** is made to **AS** alone.
24. All **IIHI** will be handled in a manner consistent with the privacy and security requirements under **HIPAA**. **IIHI** will be used only for the purpose of fulfilling **AS**'s responsibilities under this **Agreement** and as permitted or required by law.
25. No action under this **Agreement** or with regard to the services **AS** provides under this **Agreement** may be brought by the **Employer** more than two years after the cause of action has accrued.
26. **Relationship of the Parties**. Notwithstanding any provision of this **Agreement**, each party shall be and act as an independent contractor and not as a partner, agent or joint venturer of the other, and shall not bind or attempt to bind the other in contract.

-----End of Section II -----

Section III: Specific Administrative Responsibilities of Employer and AS

Initial Account Set-Up

Employer

1. The **Employer** must identify in writing to **AS** each separate **Plan** and its contractual rates for which **AS** is to provide services at least 60 days in advance of the **Effective Date** unless otherwise agreed.
2. The **Employer** must identify in writing to **AS** each **Qualified Beneficiary** and their elected **Plans** for which **AS** is to provide services at least 60 days in advance of the **Effective Date** unless otherwise agreed.

3. If the **Employer** receives a **COBRA** election form from a **Qualified Beneficiary** who was provided an **Election Notice** before the **Effective Date** of this **Agreement**, the **Employer** will immediately forward the election form and enrollment information to **AS** to facilitate the collection of **COBRA Monthly Contribution Amounts**.

AS

4. **AS** will establish the **Employer's Plans** in its various systems and will confirm accuracy of the **Monthly Contribution Amounts** established with the **Employer**.

5. **AS** shall send a notice of administrative change to all **Qualified Beneficiaries** who are receiving **Continuation Coverage** on the **Effective Date** and direct that their **COBRA Monthly Contribution Amounts** and any notice of eligibility or enrollment change be sent to **AS**.

COBRA Notice Data Submission by Employer

6. The **Employer** will submit **General Notice** and **Election Notice** data to **AS** using the **AS** online internet service called MyCOBRA. The **Employer** may use other methods such as email, fax, or Excel spreadsheet, with the approval of **AS** and subject to an additional fee described on **Schedule A**.

7. The **Employer** and **AS** may agree to establish electronic communications for the submission of **COBRA General Notice** and **Election Notice** data. This may require specialized computer programming time and **AS** reserves the right to charge a specialized computer programming fee or data entry fee described on **Schedule A**.

General Notice Issuance (formerly, the Initial Rights Notice)

Employer

8. If the **Employer** timely provides the required **General Notice** information, **AS** will issue a **General Notice** of **COBRA** rights to newly enrolled active employees and/or spouses. Such requests must be made within 60 days of the active employee's and/or covered spouse's enrollment in the **Plan**.

9. As an optional service and subject to a special fee as described on **Schedule A**, the **Employer** can provide the required **General Notice** data to **AS** for the issuance of a **General Notice** to all covered active employees and their spouses in a "mass mailing" by submitting the required information in an Excel spreadsheet in a format acceptable to **AS**.

AS

10. Within 14 calendar days following **AS's** receipt of complete **General Notice** data from the **Employer**, **AS** will issue a **General Notice** with proof of mailing to the affected employee and, if any, covered spouse.

Election Notice, Election Procedures, and COBRA Administration

Employer

11. The **Employer** will provide the required **Election Notice** data to **AS** within 30 days of the date of **Qualifying Event** that is due to
- Termination of an employee's employment,
 - Reduction in an employee's hours that results in a loss of coverage under the **Plan**,
 - Employee's death; or
 - Employee's entitlement to Medicare that results in a loss of coverage under the **Plan** for the employee's spouse or dependent child.

If the **Employer** does not provide **AS** the complete required **Election Notice** data until after the 30 -day period expires, **AS** will provide the **Qualified Beneficiaries** their **Election Notices** within 14 calendar days after receiving the data, but subject to the following condition: if a **Qualified Beneficiary** timely elects **Continuation Coverage**, the **Employer** will have sole responsibility (a) for any adverse consequences (including, for example, a **Carrier**'s refusal to provide coverage or a stop-loss insurer's refusal to reimburse claims because the **Carrier** or insurer deems the **Employer** to have provided untimely notice under **COBRA**) and (b) for ensuring the availability of **Continuation Coverage** to the **Qualified Beneficiary** for the maximum coverage period under **COBRA**.

12. The **Employer** will promptly notify **AS** in writing when the **Employer** receives any notice or communication from a covered employee, **Qualified Beneficiary** or any other person relating to **Continuation Coverage** (including **Notice of Qualifying Event**, notice of occurrence of second qualifying event, notice of disability determination and notice of change in disability status), and shall promptly forward to **AS** copies of all notices or other communications.

13. The **Employer** will provide **HIPAA Certificates of Creditable Coverage** unless the **Employer** has elected on the **Employer Application** that **AS** shall provide the **HIPAA Certificates of Creditable Coverage** subject to the additional fees as denoted on **Schedule A**. If the **Employer** makes that election, **AS** will provide **HIPAA Certificates of Creditable Coverage** to individuals who lose coverage under the **Plan** as soon as administratively practicable after **AS** is notified of termination of the individual's coverage under the **Plan** or upon an individual's request within the period that ends 24 months after the individual's loss of coverage under the **Plan**.

14. The **Employer** will notify **AS**, in writing and in a manner acceptable to **AS**, of the rates for **Monthly Contributions Amounts** and will do so at least 30 days before their effective date. If the **Employer** notifies **AS** of new rates less than 30 days before their effective date, **AS** may defer implementing the new rates to the first day of the first month that occurs more than 30 days after the **Employer**'s notification to **AS**. If the **Monthly Contribution Amount** is age-based or gender-based, the **Employer** must notify **AS** of any change in the **Monthly Contribution Amount** that is based on a change in that rating category.

15. The **Employer** will notify the **Carrier(s)** of any **COBRA** coverage elections, **COBRA** coverage terminations, or **COBRA** coverage extensions or changes in status unless the **Employer** elected one of the **Carrier** direct options as denoted on **Schedule A** and described on Addendum 3. If the **Plan** or **Carrier** requires **Monthly Contribution Amount** payment information within a specific

timeframe, it is the **Employer's** responsibility to independently obtain the information from the **Employer's** online account and to provide it to the **Plan** or **Carrier**.

16. During Open Enrollment, the **Employer** will provide all OE material to **AS** at least 15 business days prior to the desired mail date.

17. The **Employer** will promptly notify **AS** in writing when the **Employer** becomes aware of address changes of its **Qualified Beneficiaries** and anyone else enrolled on **COBRA**.

18. The **Employer** will promptly notify **AS** in writing if it becomes aware that a **Qualified Beneficiary** who is receiving **Continuation Coverage**:

- has become entitled to Medicare;
- has become covered by another **Employer's** group health plan;
- has been determined to be disabled by the Social Security Administration;
- has been determined to be no longer disabled by the Social Security Administration;
- has become divorced or legally separated; or
- no longer is a dependent child according to the terms of the **Plan**.

19. The **Employer** will promptly notify **AS** in writing when its **Plan** is no longer subject to **COBRA**.

AS

20. **AS** will receive the **Notice of Qualifying Event**, notice of disability determination, notice of occurrence of a second qualifying event, and notice of change in disability status that a covered employee, **Qualified Beneficiary**, or representative acting on behalf of either may provide to the **Plan** administrator under **COBRA**.

21. Within 14 calendar days following **AS's** receipt of complete **COBRA** data from the **Employer** for a **Qualifying Event** that is either termination of employment, reduction in hours, covered employee's death, or entitlement to Medicare that results in a loss of coverage, **AS** will issue an **Election Notice** with proof of mailing to the **Qualified Beneficiaries**.

22. If **AS** receives a complete **Notice of Qualifying Event** relating to a divorce, legal separation or a child's loss of dependent status that the **Employer**, covered employee, **Qualified Beneficiary** or representative acting on behalf of either has provided within the minimum 60-day notice period that is the later of the date of the qualifying event or the date coverage under the **Plan** is lost, **AS** will issue an **Election Notice** to the **Qualified Beneficiaries** within 14 calendar days. If the **Notice of Qualifying Event** is for an initial **Qualifying Event** and provided by the **Employer**, the **Election Notice** will be issued with proof of mailing. If a complete **Notice of Qualifying Event** is provided after the 60-day notice period has expired, **AS** will not provide the **Election Notice** and will issue a notice of unavailability to the **Qualified Beneficiaries**.

23. If **AS** receives a complete and timely notice of disability determination by the Social Security Administration that the covered employee, **Qualified Beneficiary** or representative acting on either's behalf has provided within the minimum 60-day notice period and before the expiration of the initial 18 month period of **Continuation Coverage**, then **AS** will permit the extension of **Continuation Coverage** authorized under **COBRA**. If the notification is provided after the 60-day notice period or after the first 18 month period of **Continuation Coverage**, **AS** will not permit the extension of **Continuation Coverage** and will issue a notice of unavailability of **COBRA Continuation Coverage** to the **Qualified Beneficiaries**.

24. If **AS** receives a complete and timely notice of a second **Qualifying Event** that the covered employee, **Qualified Beneficiary** or representative acting on either's behalf has provided within the minimum 60-day notice period, then **AS** will permit the extension of

Continuation Coverage authorized under **COBRA**. If the notification is provided after the 60-day notice period has expired, **AS** will not permit the extension of **Continuation Coverage** and will issue a notice of unavailability **COBRA Continuation Coverage** to the **Qualified Beneficiaries**.

25. **AS** shall track all **COBRA** deadlines.

26. **AS** shall provide all required **COBRA** notices to the **Qualified Beneficiary** as required by **COBRA**. **AS**, at its election, may also issue notices relating to **COBRA** or **Continuation Coverage** to **Qualified Beneficiaries** (or any other person or their representative) that are not required by **COBRA** and are not subject to this **Agreement**. Furthermore, the issuance of a non-required notice does not establish precedence for the future issuance of a particular notice.

27. If the **Employer** has not elected one of the **Carrier** direct options as denoted on **Schedule A** and described on Addendum 3, then the following provisions apply: **AS** shall notify the **Employer** of any **COBRA** elections, termination or changes in enrollment within 10 business days from receipt. **AS** shall not be obligated to notify the **Plan**, or **Carriers**, of the eligibility status of any active or terminated **Plan** participants or **Qualified Beneficiaries**.

28. If **AS** is notified that an event has occurred during the period of **Continuation Coverage** that permits the termination of **Continuation Coverage** before the otherwise applicable maximum **Continuation Period** would expire, **AS** shall provide the **Notice of Termination**.

Monthly Contribution Amount Collection, Accounting and Distribution

Employer

29. The **Employer** will remit the **Monthly Contribution Amounts** to the **Plan** (if the **Plan** is self-insured) or to the **Carrier(s)** (if the **Plan** is insured) and notify the **Plan** or **Carrier(s)** of the eligibility status of any **Qualified Beneficiaries**.

30. Approximately 15 working days following the close of the prior month's accounting period, **AS** releases the **Monthly Contribution Amounts**. The **Employer** acknowledges that, in order to maintain **Plan** coverage in effect during the prior month's **Grace Period**, it may have to advance its own funds prior to **AS** releasing the **Monthly Contribution Amounts**. In no event is **AS** responsible for reimbursing the **Employer** for any funds the **Employer** may have advanced to the **Carriers**.

AS

31. **AS**, as agent of and on behalf of the **Employer**, shall collect **Monthly Contribution Amounts** paid by or on behalf of **Qualified Beneficiaries**. Should the **Employer** or any other third party assume responsibility to pay **Monthly Contribution Amounts** for a **Qualified Beneficiary**, such payments must be remitted to **AS** in the same manner as any other **Monthly Contribution Amount**.

32. **AS** will deposit all **Monthly Contribution Amounts** it receives in a commingled non-interest-bearing bank account for the benefit of the **Plan**. At least once a month **AS** shall remit payments to the **Employer** as required or permitted under this **Agreement**. **AS** will maintain an accounting of the **Monthly Contribution Amounts** in the bank account that are allocable to the **Plan**, adjusted for the remittances and for the reductions for fees.

33. AS shall remit monthly to the **Employer** the net **Monthly Contribution Amounts**, reduced by the two percent administrative fee allowed under **COBRA** and any applicable service fees on **Schedule A**. If the **Plan's Monthly Contribution Amount** does not include the two percent administrative fee, AS will invoice the **Employer** monthly for the allowable two percent.

34. Unless otherwise directed by the **Employer**, AS will not accept **Monthly Contribution Amounts** made after the **Grace Period** expires.

35. AS will administer partial payment of a **Monthly Contribution Amount** in a manner consistent with Treasury Regulation §54.4980B-8, Q&A-5(d) that relates to premium payment shortfalls.

36. Special payment procedures applicable to **Qualified Beneficiaries**:

a) AS will not accept NSF checks (paper or virtual checks, returned for insufficient funds, stop payment or closure of account) as payment of the **Monthly Contribution Amount**. If a check is returned NSF within the **Grace Period**, AS will send its standard form letter requesting payment within the **Grace Period** of a **Monthly Contribution Amount** via cashier's check or money order. There is a replacement processing fee of \$25.00.

Month-End Eligibility Reports, Premium Reports and Account Reconciliation

Employer

37. The **Employer** will audit all month-end reports that AS provides the **Employer** for accuracy and promptly report any errors or discrepancies to AS within 14 days of receipt of the reports. Any failure by the **Employer** to report any errors or discrepancies will absolve AS of any liability associated with the same.

38. If AS is forwarding eligibility updates directly to the **Carrier(s)** as elected on the **Employer Application** it is the **Employer's** responsibility to perform the **Account Reconciliation** of the eligibility updates forwarded by AS to the **Carrier(s)** with any eligibility or premium type statements received or maintained by the **Employer** from the **Carrier(s)**.

AS

39. AS will provide daily summary reports through the **Employer's** online account and monthly activity reports, either online or as hard or soft copies, within a reasonable period of time following the end of the prior month's activity.

-----End of Section III -----

Section IV: Medical and Dependent Care FSA

Services Included:

Employer is responsible for all legal requirements and administrative obligations with regard to the Health FSA, except for the following administrative duties (to be performed by AS):

1. As needed, AS shall make available enrollment and reimbursement forms and instructions for filing Participant claims.
2. Upon receiving instructions from Employer with regard to a Participant's change in status or other event that permits an election change under IRS regulations, AS shall make the requested change in the Participant's election as soon as practicable.
3. Upon request by the Employer only, AS shall prepare the information necessary to enable Employer to satisfy its Form 5500 filing obligation with regard to the Health FSA only. Employer shall be responsible for reviewing the information provided by AS to ensure its accuracy, and, unless otherwise agreed by the parties in writing, Employer shall prepare and submit any Form 5500.
4. AS shall provide online or other electronic tools with which the Employer may conduct unlimited discrimination testing for the health FSA at its convenience. It is strongly recommended that Employer conduct such testing both before the beginning of the plan year as well as periodically during the plan year.
5. AS shall administer claims on the Employer's behalf.

Billing Guidelines

Capitalized terms used in this Exhibit and not defined have the meanings given in the Agreement.

Effective Date and Term:

 X The initial 12-month period commencing on the Billing Services Effective Date.

 From the Billing Services Effective Date through / /20 .

Thereafter, this Agreement will renew automatically for successive periods of twelve (12) months unless this Agreement is terminated in accordance with the provisions within this Agreement.

-----End of Section IV -----

Section V: Indemnification and Limitation of Liability

1. **Employer** will indemnify and hold **AS**, its officers, managers, directors, and employees harmless against claims, liabilities, damages, or penalties which are caused by **Employer**'s acts or omissions that are dishonest, fraudulent or illegal, in bad faith or reckless, or the **Employer**'s intentionally wrongful performance or nonperformance of obligations under this **Agreement**.
2. **AS** will indemnify and hold **Employer**, its officers, managers, directors, and employees harmless against claims, liabilities, damages, or penalties which are caused by **AS**'s acts or omissions that are dishonest, fraudulent or illegal, in bad faith or reckless, or **AS**'s wrongful performance or nonperformance of obligations under this **Agreement**. This indemnification and hold harmless does not apply to any benefits that are payable under the **Plan**.
3. **AS** is not responsible for failure to provide services if due to any cause or condition beyond the reasonable control of **AS** (e.g. acts of nature, war, or the prolonged failure of electricity or other vital utility service).

-----End of Section V-----

Section VI: Audits of AS by Employer

Employer (or its designated agent) may perform no more than one (1) audit of the records specifically related to performance of the parties under this **Agreement** each contractual year, subject to reasonable prior written notice to **AS**. Audits must be performed during **AS**'s normal working hours and the data being reviewed can be no older than 24 months before the date of the request for an audit.

AS may require **Employer** or an agent of **Employer** to sign a confidentiality agreement provided by **AS**. Each party agrees to provide reasonable assistance and information to the auditors. **Employer** acknowledges and agrees that if it requests an audit, it will reimburse **AS** for **AS**'s reasonable expenses, including copying and labor costs, in assisting **Employer** to perform the audit. Each party also agrees to provide such additional information and reports, as the other party will reasonably request.

AS will be held harmless if any requested audit information is no longer accessible due to **AS**'s inability to access an **Employer** or **Carrier**-provided eligibility submission system for any reason, including the expiration of passwords or other credentials: must be subject to inability to reset passwords. In addition, any eligibility updates provided to the **Employer** or **Carrier** by **AS** are conclusively presumed to have successfully reached the **Employer** or **Carrier** unless **AS** receives a failed-delivery notification via fax or email.

-----End of Section IV-----

Section VII: Insurance Maintained by AS

- Commercial General Liability. \$2,000,000 per occurrence; \$4,000,000 aggregate.
- Professional Liability. \$1,000,000.
- Automobile Liability. \$2,000,000.
- Employer's Liability. \$2,000,000.
- Employee Dishonesty. \$250,000.
- Cyber Liability - Limit of Liability

The maximum payable under this Contract is \$1,000,000 in the aggregate including claims expenses. The following sub-limits of liability apply, and any payment thereunder will form part of, and not in addition to, the aggregate limit of liability.

(i) Crisis Management Expenses, Customer Notification Expenses, Customer Support and Credit Monitoring Expenses

\$250,000 any one claim and in the aggregate including claims expenses

(ii) Privacy Regulatory Defense and Penalties

\$250,000 any one claim and in the aggregate including claims expenses

(iii) Forensic Costs

\$25,000 any one claim and in the aggregate including claims expenses

(iv) Employee Privacy Breach

\$1,000,000 any one claim and in the aggregate including claims expenses

Insuring Agreement B. – Media, Privacy, IP Liability

\$1,000,000 any one claim and in the aggregate including claims expenses

Insuring Agreement C. – Cyber Extortion Event

\$1,000,000 any one claim and in the aggregate including claims expenses

-----End of Section VII -----

Section VIII: Fees and Charges

1. Charges for the services provided under this **Agreement** shall be in accordance with the schedule set forth in **Schedule A**. If adequate funds are not available in the **Employer's COBRA** account (the bookkeeping account to which **Monthly Contribution Amounts** are allocated) to cover **AS's** monthly administration fees, the **Employer** will pay the fees agreed to by **AS** and the **Employer** within 30 days of the billing date.
2. Following the initial fee guarantee period, **AS** may propose changes to **Schedule A** by providing a minimum of 30 days written notice to the **Employer**, enclosing a substitute **Schedule A**. The substitute **Schedule A** shall take effect the first day of the month following the 30-day notice.
3. **Employer** agrees to reimburse **AS** for the amount of any taxes, or other charges, in connection therewith, assessed against **AS** or for which **AS** has been made a collection agent with respect to the services provided under this **Agreement**.
4. **AS** may retain **Monthly Contribution Amounts** collected up to the amount of any fees owed to **AS** if the **Employer** fails to pay any required fee or charge within 30 days of the billing date. The billing date is the date of the invoice.
5. **AS** may impose a \$35 late fee if the **Employer** fails to pay any required fee or charge within 30 days of the billing date. The billing date is the date of the invoice.

6. If the **Employer** uses the services of **AS**, this **Agreement** will be deemed to be in effect even if a copy has not been signed and returned by the **Employer**, and all fees and monthly charges will be due and payable as set forth on in **Schedule A**.

-----End of Section VIII-----

Section IX: Termination of the Agreement

1. This **Agreement** will continue in effect for a minimum period of twelve months from the original **Effective Date** of this **Agreement** and shall be automatically renewed for additional one-year periods, unless terminated earlier pursuant to the terms of this **Agreement**.
2. This **Agreement** will terminate upon the earliest of the following events:
 - a. Upon written notice by either party at least 60 days before the date termination is to be effective;
 - b. Upon written notice by the **Employer** prior to the effective date of a substitute **Schedule A** as described in Section VII, item 2.
 - c. At **AS**'s election upon the **Employer**'s failure to pay any required fee or charge within 30 days of the billing date, which is the date of the invoice;
 - d. At **AS**'s election when changes to **COBRA** or other federal or state law that necessitates a change in procedure that requires issuance of a new **Agreement** or addendum;
 - e. If either the **Employer** or **AS** does not materially meet its obligations as set forth in this **Agreement** within 30 days after receiving written notice of breach then the other party shall have the immediate right to terminate of this **Agreement** by giving written notice. The **Employer**'s obligation to pay all fees that have accrued to the date of termination shall survive the termination of the **Agreement**.
 - f. If the **Employer** has entered into a separate agreement with another party to pay the fees and charges invoiced by **AS** that party is named on **Schedule A** of this **Agreement**. If the designated party or the **Employer** does not pay the fees and charges billed by **AS** within 30 days of the date of the invoice, **AS** will cease to provide all **COBRA** services under this **Agreement** until the fees are recurrent.
3. Under no circumstances will **AS** be obligated to notify any **Qualified Beneficiary** or any other person of the termination of this **Agreement**.

-----End of Section IX-----

Section X: Schedules and Addenda

Attached to this **Agreement** are the following Schedules and Addenda, which are incorporated in this **Agreement**:

- Schedule A – Schedule of Selected Services and Fees
- **Addendum 1: MyCOBRA and AS Online Systems**
- Addendum 2: Business Associate Agreement

Agreement Acceptance

IN WITNESS WHEREOF **Accrue Solutions, LLC** and the **Employer**, by their duly authorized representatives, have executed this **Agreement**.

| City of Everett | Accrue Solutions, LLC |
|-----------------|-----------------------|
| Name: | Name: Mark Harper |
| Title: | Title: Principal |
| Signature: | Signature: |
| | Date: 03/01/2021 |

Schedule A – Schedule of Selected Services and Fees

Employer:

Agreement Period:

| AS Service | Fee |
|--|--|
| Standard Services | |
| Initial Plan and Participant Set-Up | \$Waived |
| Plan and Participant Renewal | \$Waived |
| Base Monthly Administration | \$1.00 – includes all Election Notices and General Notices for new enrollees. No Monthly Minimum |
| COBRA Two Percent Administration Fee | AS is entitled to retain the two percent administration fee allowed under COBRA regulations. If the two percent is not included in the Monthly Contribution Amounts , AS will invoice the Employer for the two percent. |
| Retiree Billing | \$3.00 Per Retiree Per Month - No Monthly Minimum |
| Selected Optional Services | |
| No optional services selected at the time of Agreement inception. | |
| Additional Optional Services Available at Employer's Request | |
| FSA Monthly Administration | \$N/A per participant per month |
| Multiple Location Reporting and Month-End Accounting | \$50.00 set-up fee, \$40.00 per location per month in excess of one |
| Nondiscrimination Testing | \$150.00 per test |
| Sect. 125 Plan Document & SPD | \$150.00 |
| FSA : Paper Account Balance Reports mailed to Participants | \$3.00 per report |
| FSA : Automated Account Balance Report emailed | Included |

| | |
|--|---|
| Mass Mailing of General Notices | \$3.00 per notice issued (6 page max). Must use a file layout acceptable to AS in order for this pricing to apply. |
| Open Enrollment Coordination and Mailing | \$15.00 per packet issued plus cost of printing and mailing |
| Fees for Notifications Required by Legislative Changes | Included in base monthly fee |
| Manual Data Entry of Notice Data | Included in base monthly fee |
| COBRA Notice Non-Standard Insert | \$50.00 base set-up fee, \$0.50 per page per notice issued |
| Specialized Computer Programming | \$125.00 per hour; one hour minimum |

| | |
|---|---|
| Electronic Data Imports | \$300.00 initial setup for each vendor. This includes up to two hours of programming and testing with each additional hour in excess of two billed at \$125.00 per hour in one hour increments. |
| Carrier Direct | |
| <ul style="list-style-type: none"> CarrierDirect Eligibility Only – Included in base monthly administration fee | |
| | |
| AS's Legal Counsel Review of Employer Requested Material Changes to the AS Standard Form Administration Agreement | Any Employer requested material changes may require AS's legal counsel's review and those fees are passed through to the Employer . AS will advise the Employer in advance of a referral to its legal counsel. |

Addendum 1: MyCOBRA and AS Online Systems

Security Procedures

1. AS may provide **Employer** with one or more sign-in codes and passwords to access MyCOBRA and AS Online, herein called “the service(s).” AS may also provide **Employer** with instructions for using the services. **Employer** agrees to: (a) comply with the instructions and any user guide that AS provides to the **Employer**; (b) take reasonable steps to safeguard the confidentiality and security of the password; (c) limit access to the password and the service persons who have need for such access; (d) notify AS immediately if **Employer** has any reason to believe the security or confidentiality required by the provision has been or may be breached; (e) immediately change the password if **Employer** knows or suspects that the confidentiality of the password has been compromised in any fashion.

Data Verification

2. AS may elect, at its discretion, to verify the authenticity or content of any data transmission by placing a call to the authorized user or any other person designated by **Employer**. AS may deny access to the service without prior notice if AS is unable to confirm to its satisfaction any person’s authority to access the service or if AS believes such an action is necessary for security reasons.

Hours of Operation

3. The services may be utilized 24 hours a day, seven days a week, except when the system is unavailable due to needed maintenance or system outages. AS is not responsible for the unavailability of the service or for any damages that may result from its unavailability. If the service is not available for any reason, the **Employer** can fax or email AS the eligibility information.

Risks of Using the Internet

4. **Employer** understands and agrees that, while AS has established certain security procedures to prevent unauthorized access to **Employer**’s account or transactions, there can be no assurance that inquiries or transactions will be completely secure. **Employer** also understands and agrees that access to the service will not be free from delays, malfunctions, or the acts of third parties.

Addendum 2: Business Associate Agreement

Applicability

This Business Associate Agreement applies only to the extent that **AS** has or maintains any Protected Health Information (“PHI”) of the **Plan** *other than* PHI described in the HIPAA Rules at 45 C.F.R. § 164.504(f)(1)(iii) relating to enrollment and disenrollment information and at 45 C.F.R. § 164.508 relating to information provided under an individual’s valid written authorization. If **AS** has or maintains *only* PHI described in 45 C.F.R. § 164.504(f)(1)(iii) and 45 C.F.R. § 164.508, this Business Associate Agreement does not apply, and creates no obligations on the **Plan**, the **Employer**, **AS** or any other person or entity. To the extent this Business Associate Agreement applies, it applies only to PHI *other than* PHI described in 45 C.F.R. § 164.504(f)(1)(iii) and 45 C.F.R. § 164.508.

Definitions

- “Business Associate” means **AS**.
- “Breach Notification Rule” means the Standards and Implementation Specifications for Notification of Breaches of Unsecured Protected Health Information under 45 CFR Parts 160 and 164, subparts A and D.
- “Discover” in connection with a Breach of Unsecured Protected Health Information has the meaning in 45 CFR §164,410(a)(2).
- “Enforcement Rule” means the enforcement provisions set forth in 45 CFR Part 160, Subparts C, D and E.
- “HIPAA Rules” mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- “**Plan** Sponsor” means the **Employer**.
- “Privacy Rules” means the Privacy Standards and Implementation Specification at 45 C.F.R. Parts 160 and 164, subparts A and E.
- “Protected Health Information” or “PHI” has the same meaning as the term “protected health information” in 45 C.F.R. §160.103, limited to the information created, received, maintained, or transmitted by Business Associate on

behalf of the **Plan**.

- “Security Rules” means Security Standards and Implementation Specifications at 45 C.F.R. pts. 160 and 164, subparts A and C.
- Unless the context otherwise requires, bolded terms have the same meanings that are ascribed to them in the **Agreement**.
- Capitalized terms not defined in this Business Associate Agreement or the **Agreement** have the meanings given to them in the HIPAA Rules, which are incorporated herein by reference.

Permissible Use and Disclosure of PHI

Business Associate may only use and/or disclose PHI:

1. as necessary to perform its obligations under the **Agreement**, including, but not limited to:
 - a. disclosures to other business associates of the **Plan** to the extent necessary for purposes of the **Plan’s** Payment and Health Care Operations, provided such other business associates have business associate agreements in place with the **Plan** as required by the HIPAA Rules and the **Plan** promptly provides a copy of the applicable provisions of such other business associate agreements to Business Associate;
 - b. disclosures to the **Plan** Sponsor to the extent necessary for the **Plan** Sponsor’s administration activities that constitute Payment or Health Care Operations, provided the **Plan** document has been amended as required by the HIPAA Rules and the **Plan** promptly provides a copy of the applicable provisions of the **Plan** document to Business Associate; and
 - c. disclosures of Summary Health Information to the **Plan** Sponsor for the purpose of (a) obtaining bids for health or stop loss insurance for the **Plan**, or (b) modifying, amending or terminating the **Plan**, provided that Summary Health Information disclosed to the Plan Sponsor for the purpose of obtaining bids for health or stop loss insurance shall not include Genetic Information;
2. for Business Associate’s own proper management and administration and legal responsibilities; provided
 - a. the Disclosure is required by law; or
 - b. Business Associate obtains reasonable assurances, evidenced by a written contract, from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall:
 - i. hold such PHI in confidence and will use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and
 - ii. promptly notify Business Associate of any Breach in the confidentiality of such PHI of which the person or organization becomes aware; or
3. to provide Data Aggregation Services related to the **Plan’s** Health Care Operations

Restrictions on Uses, Disclosures and Requests

1. Business Associate may not use or disclose PHI in a manner that would violate 45 C.F.R. pt. 164, subpart E, if done by the **Plan**, except for the specific Uses and Disclosures set forth above in **Permissible Use and Disclosure of PHI**.
2. Business Associate will limit all Uses and Disclosures of PHI, including electronic PHI, to the minimum necessary to accomplish the intended purpose of such Use or Disclosure, to the extent required by the HIPAA Rules, and consistent with the **Plan's** policy on the minimum necessary Use of, Disclosure of, and requests for PHI, to the extent disclosed by the **Plan** to Business Associate..

Prohibition on Unauthorized Use or Disclosure of PHI

Business Associate shall not use or disclose PHI in a manner that would violate the provisions of the HIPAA Rules. The **Plan** shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by the **Plan**, except as specifically permitted herein.

PHI Safeguards

1. **PHI.** Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards to prevent the improper Use or Disclosure of any PHI relating to the **Plan**. The safeguards must reasonably protect PHI from an intentional or unintentional Use or Disclosure in violation of the HIPAA Rules and limit incidental Uses or Disclosures made pursuant to a Use or Disclosure otherwise permitted by this Business Associate Agreement. To the extent the parties agree that Business Associate will carry out directly one or more of the **Plan's** obligations under the HIPAA Rules, Business Associate will comply with the requirements of the HIPAA Rules that apply to the **Plan** in the performance of such obligations.
2. **Electronic PHI.** Business Associate shall comply with the HIPAA Rules and shall use appropriate administrative, technical and physical security measures consistent with and in compliance with the HIPAA Rules to preserve the integrity, confidentiality and availability of all electronic PHI that it creates, receives, maintains or transmits on behalf of the **Plan**.
3. **PHI Exchanged in Electronic Transactions.** If Business Associate conducts any Standard Transaction as defined in the Electronic Data Interchange rules codified at 45 C.F.R. Part 162 for or on behalf of the **Plan**, Business Associate shall

comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each requirement of the Electronic Data Interchange rules and HIPAA Rules applicable to each Standard Transaction conducted by Business Associate in performance of its obligations under the terms of this Business Associate Agreement and the **Agreement** on behalf of the **Plan**.

Rights of Individuals

- 1. Access to PHI.** Business Associate shall provide access, at the request of the **Plan**, to PHI in a Designated Record Set, to the **Plan** or, as directed by the **Plan**, to an Individual for inspection and copying to meet the requirements under 45 C.F.R. § 164.524 and to meet the electronic transmission requirements for access to Electronic Health Records by Individuals in accordance with the HIPAA Rules. Effective September 23, 2013, if the **Plan** requests an electronic copy of PHI about an Individual that is maintained electronically in a Designated Record Set in Business Associate's custody and control, Business Associate will provide an electronic copy in the form and format specified by the **Plan** if it is readily producible in such format. If it is not readily producible in such format, Business Associate will work with the **Plan** to determine an alternative form and format that enable the **Plan** to meet its electronic access obligations under 45 C.F.R. §164.524.
- 2. Amending PHI.** Business Associate shall make any amendment(s) to any portion of an Individual's PHI in a Designated Record Set in the custody and control of Business Associate that the **Plan** directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of the **Plan** or an Individual in the time and manner set forth in the **Plan's** health information privacy policies and procedures.
- 3. Accounting for Disclosures of PHI.** Business Associate shall document all Disclosures of PHI and information related to such Disclosures in accordance with the requirements imposed upon the **Plan** by the Privacy Rules to respond to an Individual's request for an accounting of Disclosures of PHI.

Business Associate agrees to provide the **Plan**, in the time and manner set forth in the **Plan's** health information privacy policies and procedures, an accounting prepared in accordance with this Section, **Accounting for Disclosures of PHI**, to permit the **Plan** to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c) with respect to Electronic Health Records. To the extent a request for an accounting relates to Disclosures of PHI in Electronic Health Records by Business Associate, at the **Plan's** election, the **Plan** may provide an Individual who requests such accounting with Business Associate's contact information, and Business Associate shall provide the accounting directly to the Individual upon request by the Individual.

- 4. Availability of Disclosure Information.** Business Associate shall maintain the documented Disclosure information for at least six years following the date of the accountable Disclosure to which the documented Disclosure information relates. Business Associate will make the documented Disclosure information available to the **Plan** within 45 calendar days following

the **Plan's** request for such documented Disclosure information to comply with an Individual's request for Disclosure accounting.

Reporting of Impermissible Use or Disclosure, Breach of Unsecured PHI and Security Incidents

As described below, Business Associate shall report to the **Plan** in writing (a) any Use or Disclosure of PHI not permitted by this Business Associate Agreement (b) any Security Incident of which it becomes aware and (c) any Breach of Unsecured PHI

- 1. Impermissible Use or Disclosure.** Business Associate will provide to the **Plan's** Privacy Official written notice any Use or Disclosure of PHI not permitted by this Business Associate Agreement within seven business days after Business Associate discovers such non-permitted Use or Disclosure.
- 2. Breach.** Business Associate shall provide written notice to the **Plan's** Privacy Official of any Breach of Unsecured PHI within seven business days after Business Associate Discovers the Breach. If a law enforcement official requests a delay in reporting in accordance with 45 C.F.R. § 164.412, Business Associate may delay notifying the **Plan's** Privacy Official for the applicable time period. Business Associate's report to the **Plan** shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach, and any other available information that the **Plan** is required to include in notification to the Individual under 45 C.F.R. §164.404(c) at the time of the Business Associate's report, or promptly thereafter as the information becomes available.
- 3. Security Incidents.** Business Associate shall report to the **Plan's** Security Official any Security Incident of which Business Associate becomes aware. Business Associate will make this report once per month, except if any such Security Incident resulted in a Disclosure not permitted by this Business Associate Agreement or Breach of Unsecured Protected Health Information, Business Associate shall make the report in accordance with the provisions of Subsection 1 (**Impermissible Use or Disclosure**) or Subsection 2 (**Breach**) above, as applicable.

The Parties agree that notice by Business Associate to the **Plan** of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents shall not be required. For purposes of this Business Associate Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, Use or Disclosure of electronic PHI. "Unsuccessful Security Incidents" do not include any Breach of Unsecured PHI.

Obligations of Plan

1. Upon execution of the **Agreement**, and upon Business Associate's request, the **Plan** shall promptly provide Business Associate a copy of the **Plan's** Notice of Privacy Practices, the **Plan's** health information privacy policies and procedures, relevant business associate agreements with other business associates, the Plan's policy on the minimum necessary Use of, Disclosure of, and requests for PHI, and any other documentation in the possession of the **Plan** necessary to the performance of Business Associate's obligations under this Business Associate Agreement. The **Plan** also shall promptly provide Business Associate with any modifications or amendments to the foregoing documents as they are made.
2. The **Plan** shall notify Business Associate of any restriction to the Use or Disclosure of PHI that the **Plan** has agreed to (and any revocation of such a restriction), to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.
3. The **Plan** shall be solely responsible for ensuring that it has entered into appropriate business associate agreements with the other business associates to whom Disclosures are made under this Business Associate Agreement, as provided under the Section above entitled **Permissible Use and Disclosure of PHI**.

Subcontractors and Agents

Business Associate shall require each of its subcontractors to whom Business Associate may provide PHI on behalf of the **Plan** to agree, in a written agreement with Business Associate, to provisions that impose at least the same obligations to protect such PHI as are imposed on Business Associate by this Business Associate Agreement, and the HIPAA Rules.

Sale of PHI

Business Associate shall not receive direct or indirect payment in exchange for any PHI, unless Business Associate receives authorization by all affected Individuals, except as permitted under the HIPAA Rules.

Marketing

Business Associate shall not use PHI for Marketing purposes without authorization from the affected Individuals, unless such communication is permitted under the HIPAA Rules.

Genetic Information

Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA Rules.

Penalties for Noncompliance

Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with those HIPAA Rules that are directly applicable to Business Associates.

Access to Books and Records

Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI received from or on behalf of the **Plan** available to the **Plan** and to the United States Department of Health and Human Services or its designee for the purpose of determining the **Plan's** compliance with the HIPAA Rules.

Termination for Cause

As required by the HIPAA Rules, if the **Plan** becomes aware that Business Associate has violated a material term of this Business Associate Agreement:

1. The **Plan** shall provide an opportunity for Business Associate to cure the violation. If the Business Associate does not cure the violation within the time specified by the **Plan**, this Business Associate Agreement and the **Agreement** shall terminate.
2. The **Plan** shall immediately terminate this Business Associate Agreement and the **Agreement** if cure is not possible.

Return or Destruction of Health Information

1. Except as provided in Subsection 2 below, and subject to any record retention provisions of the **Agreement**, upon termination, cancellation, expiration or other conclusion of this Business Associate Agreement and the **Agreement**, Business Associate shall:

-
- a. retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - b. return to the **Plan** or destroy all the remaining PHI that Business Associate still maintains in any form;
 - c. continue to use appropriate safeguards and comply with 45 C.F.R. pt. 164, subpart C with respect to electronic PHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - d. not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in this Business Associate Agreement, which applied prior to termination; and
 - e. return to the **Plan** or 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.
2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall retain the PHI, extend the protections of this Business Associate Agreement to such PHI and maintain the confidentiality of all such PHI, for so long as Business Associate maintains such PHI. The obligations of Business Associate under this Subsection 2 shall survive termination of this Business Associate Agreement and the **Agreement**.
3. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.
4. The obligations of Business Associate under this provision shall survive the termination of this Business Associate Agreement.

Automatic Amendment

Upon the effective date of any amendment to the HIPAA Rules, this Business Associate Agreement shall automatically be deemed to be amended to incorporate such amendment to the HIPAA Rules so that Business Associate and the **Plan** remain in compliance with the HIPAA Rules.

Entire Agreement - Effect on Prior Business Associate Agreements

This Business Associate Agreement represents the entire Agreement between the Business Associate and the Plan relating to the subject matter hereof.