

SERVICES AGREEMENT

This Services Agreement (“Agreement”) by and between **SKY INSURANCE TECHNOLOGIES, LLC**, a South Carolina limited liability company located at 1325 Miller Road, Suite C, Greenville, SC 29607, and the City of Everett, (“Client”) a municipal government located at 2930 Wetmore Ave, Suite 5A Everett, WA 98201, is effective as of the date of Client’s electronic signature (“Effective Date”).

BACKGROUND

Sky Insurance Technologies, LLC and/or its subcontractors (collectively, “ACA Reporting Service”) provide a service to prepare and file Internal Revenue Service reports to document employee and dependent enrollment in employer sponsored health plans as required under Sections 6055 and 6056 of the Internal Revenue Code (the “Code”), enacted by the Patient Protection and Affordable Care Act, or other similar reporting required by law to administer health insurance subsidies or tax credits.

NOW, THEREFORE, in consideration of the mutual agreements and valuable consideration set out below, the parties agree as follows:

1. Services. Subject to the obligations of Client under this Agreement, ACA Reporting Service shall provide to Client those services described on Addendum 1 (the “Services”) attached hereto and incorporated herein by reference.
2. Term. Unless sooner terminated as provided in this Agreement, this Agreement shall continue for an initial term of one (1) year, beginning on the Effective Date.

Except to the extent (if any) otherwise provided in this Agreement, Client may extend the term of this Agreement (subject to the "Termination" sections below), on the same terms and conditions as in effect just before the then-current end of the term, for up to one period of one (1) year by providing written notice to Sky Insurance Technologies LLC no later than sixty (60) days before the then-current end of the term. Payment for the period of the extension shall be considered sufficient written notice and extend the term of this Agreement. The cost of services and payment for the period of the extension is based upon the products and services selected by Client as well as the rates as in effect for the Services on the date of the extension of this Agreement.

Client may not extend the term of this Agreement if at the time of its notice of extension it is in material breach of this Agreement.

3. Performance of Services. ACA Reporting Service will arrange to provide the Services to Client as specified in this Agreement.
 - 3.1 ACA Reporting Service warrants to Client, and to no other party (including individuals who receive an IRS form created from the Services), that ACA Reporting Service will use commercially reasonable care in providing the Services under this Agreement. As ACA Reporting Service’s sole liability and Client’s sole and exclusive remedy under this Agreement for erroneous information

reporting, ACA Reporting Service will reprocess the applicable form at no additional charge to Client.

- 3.2 Client understands and acknowledges that ACA Reporting Service shall provide the Services based on information provided to ACA Reporting Service by Client. Client is exclusively responsible for providing ACA Reporting Service with accurate and timely information required by ACA Reporting Service as described in Addendum 2. Client further understands that ACA Reporting Service will be entitled to rely fully on the accuracy and completeness of the information submitted by Client to ACA Reporting Service, and that ACA Reporting Service shall have no duty or responsibility to verify such information. ACA Reporting Service shall not be liable for any Damages (as defined in Section 8 of this Agreement) resulting from Client's failure to provide accurate and timely information required for ACA Reporting Service to provide the Services. Client is solely responsible for the accuracy and review of any IRS forms created or resulting from the use of the data provided by Client.
- 3.3 Notwithstanding any other provision of this Agreement, Client understands and acknowledges (i) that Client shall retain all liability and responsibility under applicable federal and state law, including without limitation, liability under Code Sections 4980H, 6055 and 6056, and (ii) that ACA Reporting Service does not, by virtue of this Agreement, assume any responsibility or liability for any obligations which by law belong to Client in its capacity as an "applicable large employer" or "plan sponsor" (as those terms are defined under Code Section 4980H), including without limitation Client's liability under Code Sections 4980H, 6055 and 6056.
- 3.4 ACA Reporting Service acknowledges and understands that it may have access to protected health information of individuals participating in Client's group health plan(s) during the course of this Agreement, as the term "protected health information" is defined under the Health Insurance Portability and Accountability Act and amendments thereto and regulations promulgated thereunder ("HIPAA"). ACA Reporting Service will not use or disclose such PHI other than as required to perform the Services set forth under this Agreement or as permitted under the Business Associate Agreement, which shall be executed by both parties in the form attached hereto as Addendum 3 and incorporated by reference herein.
4. Payment. For provision of the Services, ACA Reporting Service shall be compensated by Client based upon the products and services selected by Client as well as the rates as in effect for the Services on the date of execution of this Agreement. The parties agree that amounts paid or payable by Client to ACA Reporting Service for the Services represent fair market value for the Services and do not include additional services that may be added at a later date, including, but not limited to, print and mail services, correction fees, additional consulting, or variable hour tracking. The parties agree that amounts payable by Client to ACA Reporting Service for Services are due in full upon execution of this Agreement.
5. Termination.
 - 5.1 Either party may terminate this Agreement at any time, without cause, by providing not less than thirty (30) days' prior written notice stating the intended date of termination. If Client terminates the Agreement without cause, Client will not be entitled to any refund of any fees or payments made.

- 5.2 Either party may terminate this Agreement in the event the other party defaults in performance of any of its duties and obligations and the default is not cured within thirty (30) days after written notice is given to the defaulting party which specifies in reasonable detail the default in performance.
6. Additional Obligations of Client. As a condition precedent to the provision of the Services, Client shall perform those additional obligations listed in Addendum 2.
7. Indemnification.
- 7.1 Client shall indemnify, hold harmless and defend ACA Reporting Service, its officers, directors, shareholders and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees)("Damages") whether or not covered by insurance, caused or asserted to have been caused by, or arising out of, directly or indirectly, or as a result of the performance of any gross negligence or intentional misconduct by Client (and/or its agents, employees, officer and directors) under this Agreement or any information provided to ACA Reporting Service by Client or any agent, employee or contractor of Client.
- 7.2 Subject to the limitations set forth in Sections 3 and 8.1, ACA Reporting Service shall indemnify, hold harmless and defend Client, its officers, shareholders, directors and employees, from and against any and all Damages, whether or not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of the performance of any gross negligence or intentional misconduct by ACA Reporting Service and/or its shareholders, agents, employees and/or subcontractors (other than Client) in the performance of its obligations under this Agreement.
8. Limitation of Liability.
- 8.1 Notwithstanding anything in this Agreement to the contrary including any provision of the Business Associate Agreement between the parties, each party agrees that in no event will it seek to hold the other party liable for any Damages, claims for indemnity or contribution, or any claims for incidental, lost profits, consequential, or any similar damages related to the Services provided by ACA Reporting Service under this Agreement in excess of amount equal to the aggregate amount of fees paid by Client to ACA Reporting Service for this engagement in the twelve (12) months immediately preceding the date on which the precipitating event first occurred, even if such party has been advised of the possibility of such claims, losses, or damages. Further, it is agreed by both parties that the definition of fees paid to ACA Reporting Service will not include fees associated with postage and mailing of prepared IRS reporting forms, correction fees, additional consulting, or variable hour tracking.
9. General.
- 9.1 Notices. Any notice required or desired to be given in respect to this Agreement shall be deemed to be given upon the earlier of (i) actual delivery to the intended recipient or its agent delivered either by electronic mail to the appropriate employee of the party or by hand or by a nationally recognized overnight courier service, or (ii) upon the third business day following deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be delivered to the respective addresses set out below, or to such other address

as a party shall specify in the manner required by this Section 9.1. The respective addresses are:

If to ACA Reporting Service:

1325 Miller Road; Suite C
Attention: Amanda Brock
Greenville, SC 29607

If to Client:

2930 Wetmore Ave. Suite 5A
Everett, WA 98201
Attention: Human Resources

- 9.2 Alternate Dispute Resolution. The parties firmly desire to resolve all disputes arising hereunder without resort to litigation in order to protect their respective business reputations and the confidential nature of certain aspects of their relationship. Accordingly, the parties agree to first mediate, before filing a lawsuit, any controversy or claim arising out of or pertaining to this Agreement, or the breach thereof, which mediation shall be conducted virtually in Greenville, South Carolina. The mediator shall be mutually agreed to by the parties and shall not have previously represented ACA Reporting Service, Client, or any affiliate of either party in any capacity. No disclosure of the mediation process or the result thereof shall be made by the parties except as required by the law or as necessary or appropriate to enforce the terms of any binding agreement executed by the parties at the conclusion of such mediation.
- 9.3 No Jury Trial. The parties hereby knowingly, voluntarily, and intentionally waive the right any of them may have to a trial by jury in respect of any litigation based hereon or arising out of, under, or in connection with this Agreement.
- 9.4 No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of ACA Reporting Service and Client. Nothing contained herein or in the parties course of the dealings shall be construed as conferring any third party beneficiary status on any person or entity not a party to this Agreement, including without limitation, any employee of Client.
- 9.5 Successors and Assigns. This Agreement will inure to the benefit of and be binding upon the successors and assigns of the parties. However, this Agreement is not assignable by either party without the prior written consent of the other party, except that SKY Insurance Technologies may assign or transfer this Agreement to any entity owned or under common control with it. Written consent will not be unreasonably withheld.
- 9.6 Not a Fiduciary, Plan Administrator or Agent. SKY Insurance Technologies shall not be considered a fiduciary, plan administrator, or agent of any plan for which it provides Services under this Agreement.
- 9.7 Independent Contractors. The parties are independent contractors and neither party is an employee, agent, servant, representative, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party, or to incur any obligation or liability on behalf of the other party, without the other party's written consent. ACA Reporting Service shall be solely responsible for all compensation, benefits, and taxes associated with its employees and their performance under this Agreement.

- 9.8 Amendments; Waivers. No waiver of any term or condition is valid unless in writing and signed by authorized representatives of both parties, and will be limited to the specific situation for which it is given. No amendment or modification to this Agreement shall be valid unless set forth in writing and signed by authorized representatives of both parties.
- 9.9 Governing Law. This agreement will be governed by and construed in accordance with the laws of the State of Washington.
- 9.10 Severance and Interpretation. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is found to violate a law, it will be severed from the rest of the Agreement and ignored and a new provision deemed added to this Agreement to accomplish to the extent possible, the intent of the parties as evidenced by the provision so severed. The headings used in this Agreement have no legal effect. This Agreement shall be interpreted without regard to any rule that a document is to be construed against the party who drafts it.
- 9.11 Entire Agreement. This Agreement, and its attached Addenda, Exhibits, Attachments, and Schedules, as so designated, set forth the entire agreement and understanding of the parties relating to the subject matter contained herein, and merges all prior discussions and agreements, both oral and written, between the parties. Each party agrees that use of pre-printed forms, including, but not limited to email, purchase orders, acknowledgements or invoices, is for convenience only and all pre-printed terms and conditions stated thereon, except as specifically set forth in this Agreement, are void and of no effect.
- 9.12 Compliance with Laws. The parties expressly agree to abide by any and all applicable federal and/or state statutes, rules and regulations applicable to the parties in connection with this Agreement. In particular, without limitation, Client shall comply with all federal and state laws and regulations governing Client's relationship with its employees and other participants in Client's health insurance plans.
- 9.13 Not Used.
- 9.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Such executions may be transmitted to the parties by electronic transmission and such digital execution shall have the full force and effect of an original signature.
- 9.15 Confidentiality.
- A. Subject to Section 9.15.C, during the term of this Agreement and at all times thereafter, each party agrees that it shall not cause or permit (i) any employee, officer, director, manager, owner, other affiliate or agent of such party to, (ii) any officer, director, manager, shareholder, owner, employee or other affiliate or agent of any entity in which such Party owns an interest to, or (iii) any professional advisors of such Party to (such persons in (i), (ii) and (iii) collectively, referred to as the "Representatives" of a party) except for the express and limited purposes set forth in this Agreement, use, disclose, publish, or otherwise disseminate any of the confidential information of the other party to any third parties.

B. Proprietary Rights. This Agreement, discovery session, proprietary software, discovery workbooks and all other materials used by ACA Reporting Service in the performance of Services or provided to Client in connection with the Services (collectively, the “Materials”) are asserted by ACA Reporting Service to be confidential and proprietary to ACA Reporting Service and ACA Reporting Service reserves all right, title, and interest in and to the Materials. All information set forth in the Materials is asserted to be confidential and proprietary to ACA Reporting Service and, subject to Section 9.15.C, may not be disclosed in any manner by Client or its officers, directors, employees, agents, or contractors to any person or entity. Subject to Section 9.15.C, Client hereby agrees and warrants it will maintain all such Materials in strict secrecy and shall neither use for itself or any third party nor divulge such information to any third party, except as otherwise consented to in writing by ACA Reporting Service, which may withhold permission at its sole discretion. Subject to Section 9.15.C, Client acknowledges that this Section extends to any user to whom it grants access to the Materials. Subject to Section 9.15.C, Client shall take all necessary and proper precautions against disclosure of any Materials to unauthorized persons by any of its employees or agents, or through any physical or electronic security breach. Subject to Section 9.15.C, upon termination of this Agreement for any reason, Client shall cease all use of the Materials. Subject to Section 9.15.C, the parties recognize that a breach of this Section cannot be adequately compensated in money damages and therefore agree that injunctive relief shall be available to ACA Reporting Service, regardless of any arbitration or mediation clauses herein. Subject to Section 9.15.C, the obligations of Client under this Section shall apply as long as Client or any of its agents are in possession of the Materials.

C. ACA Reporting Service acknowledges that Client is subject to the Washington Public Records Act, chapter 42.56 RCW. This Agreement does not require the City to keep confidential or otherwise refrain from disclosing any record that is subject to disclosure under the Washington Public Records Act. This Agreement only requires the Client to maintain confidentiality of Materials that are prominently marked “Confidential.” This Agreement does not require the City to destroy or return anything that is subject to retention requirements established by the Washington Secretary of State or established by applicable law. This Agreement does not require the City to have any City employee sign any agreement. This Agreement itself (and its related amendments, purchase orders, scopes of work, service orders or similar documents stating work to be done for the City or pricing for the City) are never confidential and may at any time be posted to the City’s public website.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written herein. This Agreement will be signed with AdobeSign by the parties, which both parties agree is fully binding. The electronic signature of Client will create a digital record which shall serve as the date signed by both parties.

SKY INSURANCE TECHNOLOGIES, LLC:

By : Amanda Brock

Its (Title): Chief Operating Officer

Signature: 

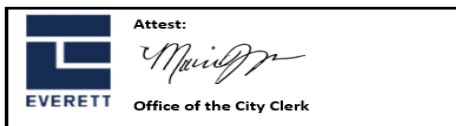
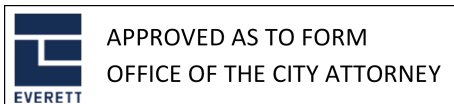
AUTHORIZED SIGNOR OF CLIENT:

By: Cassie Franklin

Its (Title): Mayor

Signature: 

Date: 02/01/2024



ADDENDUM 1: GENERAL DESCRIPTION OF SERVICES

ACA Reporting Service will provide the Services listed in this Addendum 1. As a condition to ACA Reporting Service performing the Services, Client shall perform the obligations listed in Addendum 2.

1. Client will have access through an online electronic interface to ACA Reporting Service's proprietary software and discovery session designed to collect the necessary information to complete required IRS reporting under Sections 6055 and 6056 of the Internal Revenue Code.
2. Client will have access to customer support via phone and email support according to the service package purchased and as described at the time of purchase, as well as in Section 9 of this Addendum 1.
3. ACA Reporting Service will enter into a Business Associate Agreement with Client.
4. ACA Reporting Service will accept the final employer information, plan information, enrollment and payroll data submitted by Client in accordance with Addendum 2, and will create the necessary forms 1094 and 1095 for filing.
5. ACA Reporting Service will provide a .pdf version copy to Client of all forms 1094 and 1095 created on the later of (i) ten (10) days after the submission by the Client to ACA Reporting Service of final payroll and enrollment information for the reporting calendar year, or (ii) five (5) days prior to the IRS deadline for providing forms to employees and other required recipients (e.g., COBRA beneficiaries and retirees).
6. ACA Reporting Service will transmit the generated forms to the IRS on behalf of Client by the later of (i) ten (10) days after final approval by the Client, or (ii) the final deadline the forms need to be electronically filed with the IRS.
 - a. Once ACA Reporting Service has transmitted the forms to the IRS, they will notify the client of the status of that transmission within a reasonable amount of time. If there are any discrepancies that are within the control of ACA Reporting Service, they will make any necessary corrections and refile with the IRS.
 - b. Any discrepancies or reported errors that are outside of the control of ACA Reporting Service will be communicated to Client, as well as what information is necessary to correct them, and the fees associated with transmitting corrections.
 - c. As much as it is able to, ACA Reporting Service will work directly with the IRS on behalf of Client to ensure that a successful transmission occurs.
7. ACA Reporting Service will assist Client with IRS inquiries and audits if this service was purchased. If Client elected this service, if there is ever an IRS audit or inquiry regarding the forms created pursuant to this Agreement, ACA Reporting Service will assign an account manager upon being notified of such audit or inquiry by Client. The account manager will provide direct assistance to Client in meeting the data requests of the IRS.
8. ACA Reporting Service will maintain electronic copies of (i) enrollment and payroll files received from Client, (ii) Client's completed discovery sessions and collected necessary ACA reporting information,

and (iii) 1094 and 1095 forms created for Client under this Agreement for a period of eight (8) years after such forms are filed with the IRS or such earlier date as they are to be returned to Client upon termination of this Agreement.

9. Description of Additional Services for ‘Enhanced’ and/or ‘True Full Service’ Purchases

- 9.1 If Client purchases an ‘Enhanced’ or ‘True Full Service’ package, they will have additional support from an assigned account manager.
- 9.2 Within three (3) business days of confirmation of payment for the ‘Enhanced’ or ‘True Full Service’ the assigned account manager will make every reasonable effort to schedule the initial ‘Discovery Interview Session’ at a time that is convenient for Client. ACA Reporting Service shall not be responsible for any failure by Client to respond to requests and/or correspondence by the account manager.
- 9.3 ‘Form Quality Control Checks’ shall be performed on a random sampling of a reasonable number of forms (approximately 10%). Should any discrepancies be identified during the quality control process more forms may be checked, as determined by ACA Reporting Service. This service is offered as a convenience to ensure that information was input correctly into the proprietary software and discovery workbook, and is not meant to replace or relieve Client’s responsibility for the accuracy of any information reported to the IRS.
- 9.4 ACA Reporting Service will accept and review test data submitted by Client in accordance with Addendum 2 to ensure that ACA Reporting Service will have access to the necessary information to complete the required IRS forms. This information may or may not be used to produced sample forms, and it is at the sole discretion of ACA Reporting Service to determine if the data provided is sufficient to complete the reporting in accordance with the Code.
- 9.5 Additional consulting can be provided to Client by their account manager and may be in the form of a report generated with final forms.
- 9.6 If Client purchases a ‘True Full Service’ package, they will have access to additional services for assistance with processing reasonable un-formatted payroll and enrollment data. The data provided must contain all of the information required to complete the IRS forms, including, but not limited to employee status, hire dates termination dates, and corresponding medical enrollment dates. This assistance does not include tracking, measuring, or using hours worked to determine employment status month-by-month, which is an additional service that must be purchased separately.

- 9.7 ACA Reporting Service will provide Client with a specific number of data team hours which will be used to process the Clients raw, unformatted payroll and enrollment data. If ACA Reporting Service determines that the number of hours for Client will not be sufficient, they will notify the client and determine a course of action, which may include payment of an hourly rate of \$125 for the remaining work. ACA Reporting Service will not bill the client for this time until the client has signed an additional agreement to pay.
- 9.8 The number of hours will be based upon the size of Client package purchased or the aggregate number of forms, in the case of reporting for multiple EINs, as follows:

UP TO 100 FORMS	8 Hours	7,000 – 7,999 FORMS	27 Hours
101 – 499 FORMS	11 Hours	8,000 – 8,999 FORMS	28 Hours
500 – 999 FORMS	12 Hours	9,000 – 9,999 FORMS	29 Hours
1,000 – 1,499 FORMS	13 Hours	10,000 – 10,999 FORMS	31 Hours
1,500 – 1,999 FORMS	15 Hours	11,000 – 11,999 FORMS	33 Hours
2,000 – 2,499 FORMS	16 Hours	12,000 – 12,999 FORMS	35 Hours
2,500 – 2,999 FORMS	17 Hours	13,000 – 13,999 FORMS	37 Hours
3,000 – 3,499 FORMS	19 Hours	14,000 – 14,999 FORMS	39 Hours
3,500 – 3,999 FORMS	20 Hours	15,000 – 15,999 FORMS	40 Hours
4,000 – 4,499 FORMS	21 Hours	16,000 – 16,999 FORMS	43 Hours
4,500 – 4,999 FORMS	23 Hours	17,000 – 17,999 FORMS	44 Hours
5,000 – 5,999 FORMS	24 Hours	18,000 – 18,999 FORMS	47 Hours
6,000 – 6,999 FORMS	25 Hours	19,000 – 20,000 FORMS	48 Hours

ADDENDUM 2: ADDITIONAL OBLIGATIONS OF CLIENT

As a condition precedent to ACA Reporting Service providing the Services under this Agreement, Client will be responsible for performing the additional obligations set forth in this Addendum 2:

1. Client will access ACA Reporting Service's proprietary online discovery session and complete the data collection template according to instructions provided on the website. Client will maintain responsibility for entering all discovery session data into the appropriately labeled cells and columns, unless Client has purchased a 'True Full Service' package.
2. Client will enter into a Business Associate Agreement with ACA Reporting Service in the form attached to this Agreement and represents and warrants it is compliant with HIPAA and will continue to comply with all such obligations during its relationship with Sky Insurance Technologies.
3. Client will submit final payroll and enrollment data to ACA Reporting Service no later than the 10th day of the month in which the forms must be furnished to employees and filed with the IRS. This data must encompass payroll and enrollment data for the entire calendar year for which reporting is required.
4. Client understands that due to IRS instructions and stipulations of the Affordable Care Act, responsibility for the accuracy of information remains with the employer for whom reporting is being performed. Client agrees to review all information provided by ACA Reporting Service and work with its representatives to provide corrected information if necessary.
5. Obligations of Client Related to Additional Services
 - 1.1 Client must make its representatives reasonably available to their assigned account manager in order for the account manager to successfully administer the services purchased. This includes providing an additional point of contact in case ACA Reporting Service is unable to reach the primary point of contact.
 - 1.2 Client will submit test reporting data to ACA Reporting Service to ensure that ACA Reporting Service will have access to the necessary information to complete the required IRS forms. Client must submit the test data no later than the later of: (i) November 1st of the calendar year for which the forms are being filed, or (ii) fifteen (15) days after the execution of this Agreement.
 - 1.3 If Client purchases these services, Client must pay ACA Reporting Service any additional fees due for printing, packaging and mailing of IRS 1095 forms to employees and other required recipients (e.g., COBRA beneficiaries and retirees) no later than the later of: (i) December 31st of the calendar year for which the forms are being filed, or (ii) by the date Client approves the final forms.
 - 1.4 If Client purchases mailing services, Client must approve the mailing of employee forms within three (3) days of receiving the final forms from ACA Reporting Service, unless a request is made by Client, in writing, within the three (3) days of receiving final forms. If Client requests additional time to review forms, it is the sole responsibility of Client to ensure that approval is communicated to ACA Reporting Service with reasonable time (no less than ten days) to make changes, approve changes, and submit to the IRS.

ADDENDUM 3: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made and entered into as of date of last signature below, by and between Sky Insurance Technologies, LLC (“Business Associate;”) and City of Everett (“Plan Sponsor”) on behalf of its group health plan(s) (“Covered Entity”).

WHEREAS, Plan Sponsor, Covered Entity, and Business Associate have entered into a certain underlying agreement(s) (the “Services Agreement”); and

WHEREAS, Plan Sponsor, Covered Entity, and Business Associate are committed to compliance with the Privacy, Security, Breach Notification, Standard Transactions and Enforcement Rules of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations at 45 C.F.R. Parts 160 to 164 (“HIPAA Regulations”) and any current and future regulations promulgated under HIPAA or the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”); and together with the other laws and regulations in this paragraph, the “HIPAA Rules”); and

NOW THEREFORE, Plan Sponsor, Covered Entity, and Business Associate enter into the following Business Associate Agreement in furtherance of their compliance with the HIPAA Rules, as described at 45 CFR § 164.504.

I. DEFINITIONS

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate shall be permitted to Use and Disclose PHI consistent with the Minimum Necessary standard (45 C.F.R §164.502(b)) as necessary to perform its obligations under the Services Agreement.
- b. Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Agreement or Required by Law, Business Associate may:
 - i. Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities, including as related to the Service Agreement;
 - ii. Disclose the PHI in its possession to a third party for the purpose of Business Associate’s proper management and administration, including with regard to its fulfillment of services relating to the Services Agreement or to fulfill any legal responsibilities of Business Associate; provided, however, that the Disclosures are Required by Law or Business Associate has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.

- iii. Use or Disclose PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B), including, without limitation, Disclosure of PHI to Subcontractors, vendors and/or other third parties, as may be necessary to allow Business Associate to perform services under the Services Agreement; to Use and store PHI in a benchmark database; and to Disclose de-identified and disassociated data for population benchmarking and normative reporting purposes.
 - iv. To create de-identified information in compliance with 45 C.F.R. 164.514(a)-(c). Once PHI has been de-identified, it shall no longer be considered PHI and shall not be subject to the confidentiality obligations or restrictions on Disclosure set forth in this Agreement.
 - v. Use or Disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).
- a. Business Associate agrees that it will use appropriate safeguards to prevent Use or Disclosure of PHI other than as provided in this Agreement.
 - b. Business Associate agrees to implement administrative, physical, and technical safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI.
 - c. Business Associate agrees to mitigate, to the extent practicable, any harmful effects known to it which are caused by a Use or Disclosure of PHI by it or by one of its agents or Subcontractors in violation of this Agreement.
 - d. Business Associate agrees that it will report to Covered Entity any Use or Disclosure of PHI not allowed by this Agreement if it becomes aware of the Use or Disclosure, provided that Business Associate shall not be obligated to report unsuccessful attempts to penetrate computer networks or servers that do not result in loss of data or degradation of computer networks.
 - e. Business Associate agrees that it will ensure that any agent or Subcontractor to whom it provides PHI pertaining to Covered Entity agrees in writing to the substantially similar restrictions and conditions that this Agreement imposes on Business Associate.
 - f. Business Associate agrees to provide an appropriate Individual with access to PHI in a Designated Record Set in the manner required of Covered Entity pursuant to the requirements of 45 CFR §164.524.
 - g. Business Associate agrees to allow an appropriate Individual to make amendment(s) to PHI in a Designated Record Set in the manner required of Covered Entity pursuant to the requirements of 45 CFR §164.526.
 - h. Business Associate agrees to make its internal practices, books, and records (including PHI pertaining to Covered Entity) available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule.
 - i. Business Associate agrees to document disclosures of PHI and information related to these disclosures so it or Covered Entity may respond to requests by Individuals for an accounting of disclosures of PHI pursuant to the requirements of 45 CFR §164.528.

- j. Business Associate agrees to provide PHI in the possession or control of Business Associate to appropriate Individuals in order to respond to requests for an accounting of disclosures of PHI pursuant to the requirements of 45 CFR §164.528.
- k. Business Associate agrees to promptly notify Covered Entity if there is a Breach of unsecure PHI pursuant to the requirements of 45 CFR §164.410, in which case Business Associate act in good faith to assist Covered Entity in responding to such Breach, provided that under all circumstances Covered Entity shall be responsible for reporting as required by 45 CFR §164.408.
- l. Business Associate agrees it will not Use or Disclose genetic information for underwriting purposes in violation of the HIPAA Rules.
- m. Business Associate agrees not to receive remuneration, directly or indirectly, in exchange for any PHI unless the Covered Entity or Business Associate previously obtained from the individual a valid authorization in accordance with 45 C.F.R. 164.508, except as otherwise allowed under the HITECH Act.

III. OBLIGATIONS OF THE COVERED ENTITY

Covered Entity shall comply with the following obligations with respect to Business Associate:

- a. Inform Business Associate of its privacy practices and any agreed restrictions on PHI as follows:
 - i. Covered Entity shall advise Business Associate of any limitations in the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR §164.520.
 - ii. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent that such changes affect Business Associate's Use or Disclosure of PHI.
 - iii. Covered Entity shall notify Business Associate of any restrictions on Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect Business Associate's Use or Disclosure of PHI.
- b. Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would violate the Privacy Rule.
- c. Covered Entity shall comply with this Agreement and the HIPAA Rules including the execution of policies and procedures, security implementations, a plan amendment, training, and security risk assessments.

IV. TERM AND TERMINATION

- a. Term. This Agreement shall be effective as of the date stated above and shall terminate when all PHI pertaining to Covered Entity which Business Associate maintains is destroyed or returned to Covered Entity, unless otherwise terminated under Subsection (b) below.
- b. Termination for Cause. If Covered Entity or Business Associate learns of a material breach by the other party, it shall: (1) provide a reasonable opportunity for the party to cure the breach or end

the violation, or if the party does not cure the breach or end the violation within a reasonable time; (2) terminate this Agreement immediately upon written notice to the breaching party that it has breached a material term of this Agreement and there is no cure.

c. Effect of Termination:

- i. Upon termination of this Agreement, Business Associate shall, if feasible, return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of the Covered Entity. This provision shall also apply to PHI that is in the possession of Subcontractors, vendors and/or other third parties engaged by Business Associate to assist in the provision of services. Business Associate shall retain PHI only as described in Subparagraph (ii) below.
- ii. Business Associate shall retain only that PHI for which return or destruction is infeasible or retention is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities. Business Associate shall continue to use appropriate safeguards, comply with the HIPAA Rules, and adhere to the terms of this Agreement with respect to PHI for as long as Business Associate retains the PHI.

V. MISCELLANEOUS

- a. Regulatory References. Reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. The parties agree to take such action as may be necessary to amend this Agreement from time to time for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and other requirements of the HIPAA Rules.
- c. Survival. The respective rights and obligations of Business Associate under Sections IV(c)(i) and (ii) of this Agreement shall survive termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity or Business Associate to comply with the Privacy Rule and other requirements of the HIPAA Rules. This Agreement shall be interpreted without regard to the rule that a document is to be construed against the party which drafts it. When a section of the Agreement calls for Business Associate to respond to a request from the Covered Entity in conjunction with a regulation specifically cited in the section, Business Associate may rely on the Covered Entity's request as verification by the Covered Entity that the request is made in compliance with the regulation. Business Associate is not responsible for confirming that Covered Entity's request is made in compliance with the specific regulation.
- e. Complete Integration. This Agreement forms the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written, unless expressly incorporated herein. Further, this Agreement may not be modified except in a writing signed by the duly authorized representatives of both parties. If any provision or part of this Agreement is found to be invalid, the remaining provisions shall remain in full force and effect.
- f. Successors and Assigns. This Agreement will inure to the benefit of and be binding upon the successors and assigns of Covered Entity and Business Associate. However, this Agreement is

not assignable by either party without the prior written consent of the other party, except that Business Associate may assign or transfer this Agreement to any entity owned or under common control with Business Associate. Written consent will not be unreasonably withheld.


- g. Not a Fiduciary, Plan Administrator or Agent. Business Associate shall not be considered a fiduciary, plan administrator or agent of any of Covered Entity's employee benefit plans.
- h. No Third-Party Beneficiaries. This Agreement is entered into for the benefit of Covered Entity and Business Associate. There are no third-party beneficiaries to this Agreement. Business Associate's obligations are to Covered Entity only.
- i. Indemnification. Each party to this Agreement will indemnify the other and hold it harmless against any loss, cost, damage, claim, penalty or expense (including reasonable attorneys' fees) arising directly or indirectly from the party's improper Use and/or Disclosure of PHI that is a breach of this Agreement or the HIPAA Rules; provided that any indemnification amounts provided by each party are subject to the limitation on liability provision of the underlying Services Agreement.
- j. Counterparts. This Agreement may be executed in two or more counterparts, each of which may be deemed an original.
- k. Governing Law. This Agreement shall be governed by the HIPAA Rules and, where not covered by HIPAA or other federal law, the laws of the State of Washington.

IX. ACKNOWLEDGEMENT AND SIGNATURES

The parties acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms.

Business Associate
By: Amanda Brock


Title: COO

Signature: 

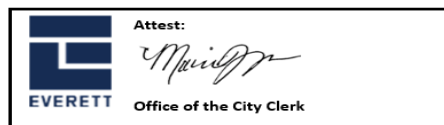
Date: 02/01/2024

Covered Entity
By: Cassie Franklin

Title: Mayor

Signature: 

Date: 02/01/2024














Sky ACA Reporting 2024_01.25.2024_rev2SD

Final Audit Report

2024-02-01

Created:	2024-01-31
By:	Marista Jorve (mjorve@everettwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAyXTU2Ez8xsYFTvjOA9wK40FuLo71RycK

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 Agreement completed.

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