

Business Associate Agreement

THIS Business Associate Agreement is between **Skagit Bonded Collectors, LLC. dba SB&C, Ltd. and Pacific Coast Commercial Adjusters, LLC** ("Business Associate") **City of Burlington** ("Covered Entity") and both Business Associate and Covered Entity are also referred to herein as "Party," or collectively as "Parties."

WHEREAS, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and related regulations, require the security and confidentiality of Protected Health Information ("PHI"); and

WHEREAS, the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), and related regulations, impose additional requirements and obligations on a Business Associate to protect and secure the confidentiality of PHI; and

WHEREAS, Covered Entity will provide PHI to Business Associate, who is a person or entity that performs certain functions or activities that involve the use and/or disclosure of PHI on behalf of, or provides services to, Covered Entity; and

WHEREAS, both Covered Entity and Business Associate desire to safeguard PHI under applicable privacy and security laws and regulations to the maximum extent allowed by law; and

WHEREAS, Business Associate acknowledges that it is subject to the same legal requirements of the HIPPA Privacy and Security Rules that apply to Covered Entity;

NOW THEREFORE, to fulfill the purposes of this agreement ("Agreement"), the Parties agree to the following:

I. DEFINITIONS

Terms under this Agreement, and not otherwise defined in this section, shall have the same meaning as those terms set forth in 45 CFR Parts 160, 162 and 164.

- A. Breach. "Breach" shall have the meaning as set forth in 45 CFR 164.402.
- B. Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for Covered Entity that is medical and billing records about individuals, or is used in whole or in part, by Covered Entity to make decisions about individuals. See 45 CFR 164.501.
- C. Electronic Protected Health Information. "Electronic Protected Health Information" (hereinafter EPHI) shall have the same meaning as the term "electronic protected health information" as defined in 45 CFR 160.103.
- D. Individual. "Individual" shall have the same meaning as the term "individual" as used in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g) and state law.
- E. Privacy Rule. "Privacy Rule" shall mean the Standards of Privacy of Individually Identifiable Health Information in 45 CFR Parts 160 and 164.
- F. Protected Health Information. "Protected Health Information" ("PHI") shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on the behalf of Covered Entity.
- G. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501 and/or Washington state law and regulations.
- H. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- I. Security Incident. "Security Incident" shall have the same meaning as the term "security incident" as defined in 45 CFR 164.304 (i.e. the attempted or successful unauthorized access, use, disclosure,

modification, or destruction of information or interference with system operations in an information system).

- J. Security Rule. "Security Rule" shall mean the HIPAA security regulations set forth in 45 CFR Parts 160, 162 and 164.
- K. Standard Transaction. "Standard Transaction" means a transaction that complies with an applicable standard adopted under 45 CFR Part 162, Administrative Requirements. See 45 CFR 162.103.
- L. Unsecured PHI. "Unsecured PHI" shall have the same meaning as set forth in 45 CFR 164.402.

II. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

A. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for the following purpose(s), and the extent that such use or disclosure of PHI would not violate this Agreement or applicable federal or state laws and regulations if done by Covered Entity.

B. Specific Use and Disclosure Provisions

- (1) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate, to collect accounts that are bad debt, or to carry out the business and legal responsibilities of the Business Associate.
- (2) Access to supporting documentation for legal action taken to collect payment in order to substantiate the health care services provided by Covered Entity to its patient.
- (3) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provide that disclosures are required by law, or Business Associate obtains a written agreement from the person or entity to whom the PHI is disclosed that it will agree to the same restrictions and conditions that apply to Business Associate under this Agreement.
- (4) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504 (e)(2)(i)(B).
- (5) Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 42 CFR 164.502(j) (1).

III. PRIVACY OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Pursuant to HITECH and implementing regulations, HIPAA privacy provisions and penalties shall be applicable to Business Associate to the same extent as Covered Entity.

- A. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
- B. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees that it will train all persons who act on its behalf, including employees, agents, and others in its workforce who have access to PHI, on policies and procedures with respect to the uses and disclosures of PHI so as to carry out their function within the Business Associate.
- C. Business Associate agrees to mitigate, to the extent practicable, any breach that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

- D. Business Associate agrees to notify Covered Entity's Privacy and/or Security Officers (see Section X. L.) within 7 days of discovery of any breach of Unsecured PHI, including unauthorized uses or disclosures of PHI, consistent with HIPAA and HITECH requirements. Such notice shall include the identification of the persons whose PHI was breached, a description of when and how the breach occurred, the persons who breached the PHI, the specific PHI involved in the breach for each person and the Business Associate response to the breach, including, but not limited to corrective action taken. Business Associate will indemnify and hold Covered Entity harmless from all liabilities, costs and damages arising out of or in any manner connected with a breach of PHI by Business Associate, its employees or agents.
- E. Business Associate agrees, upon request of Covered Entity, to notify those individuals whose PHI has been breached, as determined by Covered Entity, in accordance with notification provisions outlined in the HIPAA privacy regulations. In addition, Business Associate shall immediately notify Covered Entity's Privacy Officer at any time that it provides notice of a breach of PHI to any individuals whose PHI was provided by Covered Entity under this agreement.
- F. Business Associate agrees that it will require any agent, including subcontractor, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agree in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to the PHI.
- G. Business Associate agrees to provide access to PHI in Designated Record Set, at Covered Entity's request and in the time and manner designated by Covered Entity. Such access will be provided to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR 164.524.
- H. Business Associate agrees to make its internal practices, books, and records related to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- I. Business Associate agrees to document and provide Covered Entity or a designated individual, a list of disclosures of PHI by Business Associate and information related to such disclosures, and information collected in accordance with Section II of this Agreement ("accounting of disclosures"), to permit Covered Entity to timely respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- J. Business Associate agrees to comply with individual requests, received directly from the individual or through Covered Entity, for restrictions of certain disclosures of PHI to health plans.
- K. Business Associate agrees to apply the minimum necessary standard to include adoption and use of the limited date set safe harbor for use of disclosure of PHI.
- L. Business Associate agrees, upon request of Covered Entity or an individual to allow the individual to make any amendment(s) to PHI in a designated record set as directed or agreed by the Covered Entity pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526.
- M. Business Associate agrees to comply with all other restrictions and prohibitions on the use or disclosure of PHI contained in the Privacy Rule.
- N. To the extent Business Associate is a Creditor as defined in the Federal Trade Commission's (FTC) Red Flag Rules, as may be amended (16 CFR Part 681) with respect to its use and disclosure of PHI under this Agreement, Business Associate agrees that it will comply with the FTC Red Flag Rules, including but not limited to a written program to prevent, detect and mitigate identity theft.

IV. SECURITY OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Pursuant to HITECH and implementing regulations, HIPAA security provisions and penalties shall be applicable to Business Associate to the same extent as Covered Entity.

- A. Business Associate agrees to comply with the Security Rules at 42 CFR 308 (administrative safeguards); 42 CFR 164.310 (physical safeguards); 42 CFR 164.312 (technical safeguards), 42 CFR 164.316 (policies, procedures, documentation) to protect the confidentiality, integrity, and availability of EPHI that creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate shall document and keep such security measures current and available for inspection by Covered Entity upon request. Business Associate certifies that its security measure comply with the Security Rule.
- B. Business Associate represents and warrants that it will require any agent, including a subcontractor, to whom it provides EPHI to protect such information by implementing reasonable and appropriate safeguards to protect such information which meet at least minimum standards required by the Security Rule.
- C. Business Associate agrees to notify Covered Entity's Privacy Officer and/or Security Officer (see Section X. L.) within 7 days after discovery of any and all security incident(s) of which it becomes aware.
- D. Business Associate agrees to make its policies and procedures, and documentation required by the Security Rule available to Covered Entity or the Secretary of the Department of Health and Human Services for the purposes of determining the Covered Entity's compliance with the Security Rule.

V. ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS FOR BUSINESS ASSOCIATE

- A. If Business Associate conducts any Standard Transactions for, or on behalf of, the Covered Entity, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of 45 CFR Part 162.
- B. Business Associate shall not enter into, or permit its subcontractors or agents to enter into, any agreement in connection with the conduct of a Standard Transaction for, or on behalf of, Covered Entity that:
 - (1) would change the definition, data condition or use of a data element or segment in a standard;
 - (2) add any data elements or segments to the maximum defined data set;
 - (3) use any code or data elements that are either marked "not used" in standards' implementation specification or are not in the standard's implementation specification(s); or
 - (4) change the meaning or intent of the standard's implementation specification(s).

VI. NOTICE OF PRIVACY PRACTICE

- A. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by any individual to use or disclose PHI given to Covered Entity, if such changes or revocation affect Business Associate's permitted or required uses and disclosures of PHI.

VII. PERMISSIBLE REQUESTS BY COVERED ENTITY

- A. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the HITECH Act, or applicable state law if done by Covered Entity.
- B. Covered Entity may request Business Associate use or disclose PHI, if applicable and in accordance with the purpose of this Agreement or an agreement for services between Covered Entity and Business Associate, for data aggregation or management and administrative activities of Business Associate.

VIII. TERMS AND TERMINATION

- A. Term. The Term of this Business Associate Agreement shall be one year, and shall be automatically renewed for one year periods so as not to terminate until all the PHI Covered Entity provided to Business

Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is unfeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

B. Termination for Cause.

- (1) In the event of a Breach, Business Associate will have 15 business days to cure the Breach or end the violation. If Business Associate does not cure the Breach or end the violation within the 15-day period, Covered Entity may terminate this Agreement upon written notice.
- (2) Either party may immediately terminate this Agreement and any agreement identified in Section II, A, upon written notice, if the other Party has breached a material term of the underlying Agreement and cure of the breach is not possible. Or,
- (3) If neither termination nor cure is feasible, the non-breaching Party shall report the violation to the Secretary.

C. Effect of Termination.

- (1) Except as provided in paragraph (2) below, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- (2) In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement in writing between Covered Entity and the Business Associate that return or destruction of PHI is unfeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

VIII. MISCELLANEOUS

- A. Regulatory References. A reference in this Agreement to HIPAA, HITECH, or a cite or section of the Privacy Rule or Security Rule means the section as is in effect or as may be amended.
- B. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of applicable federal and state laws and regulations (including, but not limited to, the Privacy Rule, the Security Rule, HIPAA and HITECH, and as these may be amended). Any amendments to this Agreement shall be in writing and attached hereto.
- C. Survival. The respective rights and obligations of Business Associate set forth in Sections II – VII of this Agreement shall survive the termination of this Agreement.
- E. Assignment. Business Associate may from time to time assign accounts to another Agency in an effort to recover monies owed to the Covered Entity unless the Covered Entity requests in writing that this is prohibited.
- F. Severability. If any term or provision of this agreement is held to be invalid for any reason, the invalidity of that section shall not affect the validity of any other section of this agreement, provided that any invalid provision is not material to the overall purpose and operation of this agreement, and the remaining provisions of this agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated.
- G. Binding Effect. This Agreement shall be binding upon, and shall extend to the benefit of, the Parties hereto and their respective permitted successors and assigns.

- H. Execution. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute but one Agreement.
- I. Independent Contractor. Nothing in this agreement is intended nor shall be construed to create an employer/employee relationship between Covered Entity and Business Associate. The sole interest and responsibility of the Parties is to perform services and obligations under this agreement in a competent, efficient, and satisfactory manner.
- J. Venue and Governing Law. This agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.
- K. Audit. Business Associate shall notify Covered Entity Privacy Office and/or Security Officer if Business Associate becomes the subject of a Department of Health and Human Services audit pursuant to 42 USC §17940.

**Skagit Bonded Collectors, L.L.C. dba SB&C, Ltd.
and Pacific Coast Commercial Adjusters, LLC**

City of Burlington

Signature

Date

Printed Name

Title

Date

**SKAGIT BONDED COLLECTORS
TERMS OF SERVICES (PUBLIC ENTITIES)**

The following are the Terms of Service for all accounts listed by the **City of Burlington** (“Client”) with Skagit Bonded Collectors, LLC (“Agency”) for collection:

General

Agency will perform all work and furnish all equipment, labor, and materials Agency deems necessary and reasonable to collect accounts.

Agency from time to time, at Agency’s sole discretion, may take legal action to recover accounts. Client fully authorizes Agency to employ such legal process, and Client will undertake all reasonable efforts to assist Agency, including providing evidence and testimony in the legal process.

The Agency will maintain records of the accounts listed. Client may request information regarding the accounts. Also, Agency may request information from Client regarding the accounts.

Agency may forward any of Client’s accounts to an agency in another area for assistance in collection, and such other collection agency shall have authority to exercise all ordinary and reasonable collection efforts as permitted by law.

Client confirms that, to the best of Client’s knowledge, all accounts listed are valid and legally enforceable debts; that the names and amounts listed are correct; and that Client will, both before and after submitting said accounts, comply with all applicable federal, state and local laws with respect to said accounts.

Client will provide, whenever requested by Agency, a written verification of any of the listed accounts and/or a copy of any judgment entered on such accounts. Client will provide the name, address and all other appropriate information regarding the person or entity who originally incurred the debt.

Client will forward to Agency any payment it receives for an account within 3 business days of receiving the payment.

Client will notify Agency within 3 business days if it receives an insurance payment or adjustment, or other payment or adjustment that cannot be forwarded to Agency (collectively “Client Payment”), on any account. Client will be assessed collection fees for any Client Payments. At the end of each month, Agency will invoice Client for the collection fees due to Agency for any Client Payments, and Client will remit the funds received to Agency within 15 days of invoice from Agency. If Client will receive money from Agency in the month in which collection fees for a Client Payment are due to Agency, Agency may opt to have the money withheld from the payment to Client.

Client will promptly report any Bankruptcy Notices, Probate Notices, and any and all communications from the debtor, or any representative of such debtor, on any accounts.

Client agrees to return to Agency any money paid to it by Agency, when (1) Agency is required to reverse a payment and return funds in accordance with applicable laws, (2) a debtor files for Bankruptcy and Agency determines that a payment should be reversed and returned; or (3) the debtor's payment is returned by the debtors' bank due to insufficient funds, a stop payment, or otherwise. Client agrees to pay these funds to Agency within 15 days of invoice from Agency. Agency may opt to have any money owed to Agency by Client, withheld from the next payment owed to Client.

When Client lists accounts with Agency, the listing constitutes a permanent assignment of the accounts, and Agency will have full discretion in determining how to proceed with the collection process. Agency has the sole right to reassign the accounts to Client, at any time, should Agency determine it is in the Agency's best interests to do so.

Client grants Agency the authority to receive payment in cash, check, money order or other negotiable instruments, and to take possession of collateral, including real and personal property where applicable, on behalf of Client; and additionally, authorizes and appoints Agency as power of attorney to execute, authorize or endorse on behalf of Client.

Public Entities Authorized to Include Collection Costs Under RCW 19.16.500 Costs, Fees, and Duties

To the extent permitted by RCW 19.16.500, a 35% collection fee will be added to non-Medicare accounts listed, and Agency will be entitled to that fee for services rendered (a pro-rata allocation will apply for partial payments on an account). In accordance with RCW 19.16.500(2), Client will mail pre-collect notice(s) at least 30 days prior to listing an account with Agency. Furthermore, Agency's fee is not contingent upon the validity or enforceability of these added collection costs authorized by RCW 19.16.500.

If Agency initiates legal action, Agency will advance the court costs, process server fees, attorney fees, and all other costs associated with the legal action. The Agency will be entitled to recover all of those costs from money collected from the debtor before any funds are remitted to Client.

Remittance

At the beginning of each month, Agency will prepare a statement for Client and remit to Client the funds received on accounts submitted by Client, less the collection fees; the court costs, process server fees, attorney fees, and all other costs associated with the legal action advanced by Agency; and any other amounts due and owing from Client to Agency under the terms of this agreement. Agency will remit the net funds within 15 business days of the end of each calendar month. Client will remit any funds due to Agency within 15 days of the statement date.

Settlement

Any settlement of a listed account for less than 90% of the balance in full shall be agreed upon by Agency and Client prior to acceptance by either party. Settlements equal to or in excess of that percentage of the balance can be accepted by Agency in its sole discretion.

Liability

Agency agrees to be responsible for all of its actions, and Agency will defend, indemnify and hold Client, its directors, officers, management and employees harmless from and against any and all claims, demands, liabilities, damages, expenses (including attorneys' fees) for injury to persons or damage to property caused by or asserted to have been caused by the negligent or intentional acts of Agency, its employees, agents, or servants, if any. Also, Client will defend, indemnify and hold Agency, its managers, members, agents, servants and employees, if any, harmless from and against any and all claims, demands, liabilities, damages, expenses (including attorneys' fees) for injury to persons or damage to property caused by or asserted to have been caused by the negligent or intentional acts of Client, its directors, officers, agents, servants or employees.

Binding Effect: This agreement shall be binding on and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

Governing Law: It is agreed by and between the parties hereto that this agreement shall be governed by, construed and enforced in accordance with the laws of the State of Washington as they now exist or as may be hereafter amended. Both parties agree to the jurisdiction and venue of the Skagit County Superior Court, Skagit County, Washington.

Severability: In the event that a part of this agreement is declared void or against public policy, those provisions shall be deleted and the remaining provisions shall be given full force and effect in the same manner as though the deleted portions had never been included and, to the extent this agreement is severable.

Construction: This document has been submitted to the scrutiny of the parties and their respective attorneys, and shall be given a fair and reasonable interpretation in accordance with the provisions hereof, without weight or consideration being given to all or any portion of it having been drafted by any party hereto or by their counsel.

Waiver: The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, all of which shall continue and remain in force and effect as if no forbearance or waiver had occurred.

Skagit Bonded Collectors LLC

Client Signature

Date _____

Date _____