

STATE OF TEXAS

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**INTERLOCAL AGREEMENT WITH NORTH  
CENTRAL TEXAS COUNCIL OF GOVERNMENTS  
FOR PROFESSIONAL SERVICES**

TARRANT COUNTY

**WHEREAS**, the County of Tarrant, the County of Dallas, and the North Texas Tollway Authority joined together in 1998 to create the Public Employee Benefits Cooperative of North Texas, hereinafter referred to as PEBC, to provide quality health-related benefits to its employees; and

**WHEREAS**, the County of Denton joined the PEBC effective January 1, 2003; and

**WHEREAS**, the County of Parker joined the PEBC effective January 1, 2010; and

**WHEREAS**, PEBC believes that it achieves greater efficiencies through a dedicated staff to focus solely on PEBC activities; and

**WHEREAS**, the North Central Texas Council of Governments, hereinafter referred to as NCTCOG, wishes to provide professional services, to include dedicated staff, data, website and eligibility services to PEBC and for the exclusive benefit of the PEBC; and

**WHEREAS**, the NCTCOG has for over fifty years, worked to facilitate cooperation between and among local governments through the provision of services to local governments; and

**WHEREAS**, Chapter 791 of the Texas Government Code permits agreements between local governments and Councils of Governments for cooperative purchases and the provision of administrative services; and

**WHEREAS**, the PEBC Members (as defined herein) find the service provided by NCTCOG is a service each PEBC Member is authorized to perform individually; and

**WHEREAS**, the PEBC Members find that the payments by the PEBC Members for services performed pursuant to this Agreement may be made from current revenues readily available to the paying PEBC Members; and

**WHEREAS**, the PEBC Members each find that the amount paid for the services performed by NCTCOG under this Agreement fairly compensates NCTCOG for said services.

**NOW, THEREFORE, THIS AGREEMENT** is hereby made and entered into individually by the PEBC Members and the NCTCOG upon and for the mutual consideration stated herein:

**I.  
WITNESSETH**

This Interlocal Agreement for Professional Services ("Agreement") is entered into individually by the Counties of Tarrant, Dallas, Denton, and Parker, and the North Texas Tollway Authority (NTTA), as members of the PEBC (collectively referred to herein as "PEBC Members") and the NCTCOG, for the

purpose of providing dedicated staff and other services as described in this Agreement for the exclusive benefit of the PEBC which the governing bodies of the PEBC Members find serve a public purpose and service the public welfare of its employees and citizens. The Counties of Tarrant, Dallas, Denton, and Parker, the North Texas Tollway Authority (NTTA), and North Central Texas Council of Governments (NCTCOG) may hereinafter be referred to collectively as “Parties”.

If the PEBC allows additional entities to become members, NCTCOG agrees to provide services pursuant to this Agreement to such additional members provided such members approve this Agreement.

## **II. SCOPE OF SERVICES**

- A. The services provided by NCTCOG for the provision of dedicated staff and other services shall include, but are not limited to, the following:
1. NCTCOG will employ one (1) professional staff person to serve as the PEBC Executive Director, and additional dedicated staff persons as approved by the PEBC Board, who will be dedicated solely to work with, and support the activities of, the PEBC;
  2. NCTCOG will make available to PEBC dedicated staff persons all benefits received by other NCTCOG employees;
  3. NCTCOG will ensure, either through contract or other available means, that PEBC dedicated staff persons have reasonable office space to perform the PEBC required services;
  4. NCTCOG will provide administrative services to manage and disburse funds provided by PEBC Members for the purpose of this Agreement.
  5. NCTCOG will provide data, website and eligibility services (hereinafter referred to as “Data and Eligibility Services”) as more fully described in Exhibit A attached to this Agreement for the exclusive benefit of the PEBC.
  6. NCTCOG will contract with a vendor, as approved by the Board of the PEBC, to provide health and welfare benefits core-consulting services for the exclusive benefit of the PEBC. The parties find these services are “professional services” requiring a high degree of education and experience. NCTCOG shall designate the Executive Director of the PEBC to act on behalf of NCTCOG under the Contract in all regards. NCTCOG shall take no action under the Contract without the written approval of the Executive Director of the PEBC.

## **III. TERM**

The term of this Agreement shall commence on January 1, 2023 and shall remain in effect through December 31, 2023. Unless otherwise terminated in accordance with the provisions of this Agreement, this Agreement may be renewed for subsequent one-year periods. The Agreement may be extended by mutual written agreement by the PEBC Members and NCTCOG. This Agreement may be terminated without cause by either of the parties with a 180-day notification in writing to all parties. In the event a

member ceases to be a member of the PEBC, this Agreement shall continue in full force for the benefit of the remaining Members, unless terminated as otherwise described in the Agreement.

#### **IV. COSTS**

The total cost of this Agreement effective January 1, 2023 shall be \$1,832,483. Line-item detail of this cost amount is found in Exhibit C attached to this Agreement. In the event this Agreement is renewed and provided the Scope of Services described in Exhibit A does not materially change, the amount charged by NCTCOG for Data and Eligibility Services as set forth in Exhibit A shall not exceed \$324,146 in calendar year 2023. NCTCOG shall invoice each PEBC member monthly for its pro rata share of the amount set forth in Exhibit C calculated on a monthly basis. The pro rata share of each PEBC member shall be equal to the percentage of the sum of its total number of employees and retirees enrolled in a PEBC plan to the total number of all PEBC members, as described below.

1. The total number of regular full-time employees plus the total number of eligible and regularly employed eligible part-time employees (if applicable), multiplied by a factor of 1, plus;
  - a. For those PEBC members with retirees enrolled in the Health Care Enhancement for Local Public Safety (HELPS) provision of the Pension Protection Act of 2006, the total number of retirees multiplied by a factor of 2.5, or;
  - b. For those PEBC members with retirees not enrolled in the HELPS program, the total number of retirees multiplied by a factor of 1.5.

For purposes of this Agreement, regular full-time employees and regularly employed eligible part-time employees are defined as the total number of basic life units as measured on the first regular payroll date in October of the year preceding the effective date of this Agreement. Retirees are defined as the total number of benefit eligible retirees and benefit eligible surviving dependents of retirees, measured on the first regular payroll date in October of the year preceding the effective date of this Agreement. Payments are due to NCTCOG no later than 30 days following receipt of invoice. If additional entities become members of the PEBC, the PEBC shall notify NCTCOG of such occurrence and the pro rata share of costs applicable to each member under this Agreement.

#### **V. LONG TERM CARE INSURANCE**

During the term of this Agreement and subject to the provisions of the PEBC Group Long Term Care Insurance ("LTC") plan with the Prudential Insurance Company of America and subject to the terms outlined in Exhibit D to this Agreement, NCTCOG is considered a "participant" of the PEBC for access to the PEBC Group LTC plan benefits only, so long as the LTC plan is available to PEBC Members. Such access does not create or imply membership in the PEBC nor extend rights to any other PEBC benefit or agreement. In the event this Agreement is not renewed, access to the PEBC Group LTC plan will end effective the last date this Agreement is in force and NCTCOG, as a Group Contract Holder for the provision of PEBC Group Long Term Care Insurance benefits, must withdraw sponsorship according to the provisions of the Group Contract and immediately cease offering the LTC plan to its employees, retirees and their eligible family members. The PEBC LTC plan Group Contract provisions allowing an insured to convert to an individual policy without evidence of insurability will apply.

## **VI. MANAGEMENT OF AGREEMENT**

It is mutually agreed that this Agreement shall be managed under the following terms:

- A. The PEBC Board shall select the PEBC Executive Director who shall then be employed by NCTCOG. The PEBC Executive Director shall report to the PEBC Board.
- B. The PEBC Executive Director shall be responsible for the selection of and day-to-day supervision of any PEBC dedicated professional staff and the day-to-day operations of the PEBC.
- C. The PEBC Executive Director shall select the office location of the dedicated professional staff.
- D. NCTCOG will expend Agreement funds only as outlined in Exhibit A, with fringe and indirect costs based on NCTCOG's established rates (appropriately prorated for calendar year). Expenditures beyond the established line-item amounts in Exhibit C shall be made only upon approval of the PEBC Board.
- E. NCTCOG shall provide the PEBC Executive Director with a monthly financial statement listing expenditures during the previous month with year-to-date totals.
- F. Upon reasonable notice, the PEBC reserves the right to audit NCTCOG's expenditures relating to this Agreement.
- G. Provided all funds due NCTCOG are currently paid, all funds not expended, or encumbered, shall be returned annually to the PEBC Members based on the pro rata share formula outlined in Section IV of this Agreement. Funds to be returned shall be paid within 6 months following the previous year, unless otherwise authorized by the PEBC Board.
- H. Furniture and equipment (i.e., desks, chairs, computers, and other non-consumable items) purchased by NCTCOG during the term of this Agreement for the benefit of the PEBC (as provided for in Exhibit C) shall be used exclusively by PEBC staff and shall be relinquished to the then-current PEBC members upon the expiration or final termination of this and succeeding annual agreements for services as set forth herein.

## **VII. AGENCY-INDEPENDENT CONTRACT**

PEBC Members and NCTCOG agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with this Agreement. To the extent permitted by the Texas Constitution, laws, and rules, and without waiving any immunities or defenses available to PEBC Members as governmental entities, the participants in the PEBC, based on their pro rata participation as set forth in Section IV of this Agreement, shall indemnify and hold NCTCOG harmless for any acts, forbearance, negligence, or deeds of dedicated professional staff described in Section VI. above. This

Agreement does not and shall not be construed to entitle either party or any of their respective employees, if applicable, to any benefit, privilege or other amenities of employment applicable to the other party.

## **VIII. AMENDMENT**

This Agreement may not be amended except in a written instrument specifically referring to this Agreement and signed by the parties hereto.

## **IX. BINDING AGREEMENT, AUTHORITY, PARTIES BOUND**

This Agreement has been duly executed and delivered to all parties and constitutes a legal, valid and binding obligation of the parties. Each person executing this Agreement on behalf of each party represents and warrants that they have full right and authority to enter into this Agreement.

## **X. SOVEREIGN IMMUNITY AND APPLICABLE LAW**

**THIS AGREEMENT SHALL BE EXPRESSLY SUBJECT TO THE PARTIES' SOVEREIGN IMMUNITY, TITLE 5 OF THE TEXAS CIVIL PRACTICES AND REMEDIES CODE AND ALL APPLICABLE FEDERAL AND STATE LAW. THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT THE PARTIES HAVE BY OPERATION OF LAW. NOTHING IN THIS AGREEMENT IS INTENDED TO BENEFIT ANY THIRD PARTY.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any legal action involving a PEBC Member shall be in the county in Texas where the principal office of the PEBC Member is located. No suit against a party to this Agreement may be brought in a county other than the county in which their principal office is located.

## **XI. SEVERABILITY**

In the event that one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of the Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in force and effect.

## **XII. FISCAL FUNDING**

Notwithstanding anything to the contrary, the obligations of the PEBC Members are contingent upon the availability of appropriated funds. In the event of no funds or insufficient funds are appropriated to meet their obligations under the Agreement, each PEBC Member may terminate their participation in this Agreement. NCTCOG shall be entitled to compensation for services performed prior to the date of

termination. A terminating PEBC Member must provide the PEBC 180 day notice in the event the Member desires to exercise this clause.

### **XIII PRIVACY AND CONFIDENTIALITY**

The Parties hereby agree to the terms of the **Business Associate Agreement (BA Agreement)**, attached as **Exhibit B** and incorporated herein by this reference. If a party hereto engages in an electronic transaction for which the Secretary of Health and Human Services has adopted a standard pursuant to 45 CFR part 162, then such party is responsible for ensuring compliance with the adopted standard. At all times during the Term of this Agreement, the PEBC and NCTCOG may transmit to and receive from each other protected health information as is necessary for the Parties to perform their respective obligations set forth herein. Any party hereto using de-identified information shall be responsible for ensuring such information complies with the requirements of 45 CFR 164.514, as amended.

### **XIV MULTIPLE COUNTERPARTS**

This Agreement may be executed by the respective Parties in multiple counterparts, and the validity of the Agreement may not be challenged by a party because the parties failed to execute one single copy of the Agreement.

### **XV SIGNATORY CLAUSE**

The individuals executing this Agreement on behalf of the Parties acknowledge that they are duly authorized to execute this Agreement. All Parties hereby acknowledge that they have read, understand, and shall comply with the terms and conditions of this Agreement, the exhibits, and Business Associate Agreement attached hereto and/or otherwise incorporated by reference herein.

IN WITNESS HEREOF, the Parties hereto have executed this Agreement as of the day and year set forth on the signature page.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURES ON FOLLOWING PAGE]**

## SIGNATURE PAGE

### COUNTY OF DALLAS STATE OF TEXAS

\_\_\_\_\_  
Clay Jenkins, County Judge

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
JOHN CREUZOT  
DALLAS COUNTY DISTRICT ATTORNEY

\_\_\_\_\_  
Assistant District Attorney

### COUNTY OF TARRANT STATE OF TEXAS

\_\_\_\_\_  
Tim O'Hare, County Judge

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Criminal District Attorney's Office\*

\*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.

Certification of Available Funds: \$ \_\_\_\_\_

\_\_\_\_\_  
Tarrant County Auditor

### COUNTY OF DENTON STATE OF TEXAS

\_\_\_\_\_  
Andy Eads, County Judge

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
DENTON COUNTY DISTRICT ATTORNEY

\_\_\_\_\_  
Assistant District Attorney

### COUNTY OF PARKER STATE OF TEXAS

\_\_\_\_\_  
Pat Deen, County Judge

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
John Forrest, Parker County Attorney

### NORTH TEXAS TOLLWAY AUTHORITY

\_\_\_\_\_  
James Hofmann, CEO/Executive Director

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
General Counsel

### NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

\_\_\_\_\_  
Mike Eastland, Executive Director

Date: \_\_\_\_\_

## **EXHIBIT A**

### **DATA AND ELIGIBILITY SERVICES**

- A. **Scope of Services:** NCTCOG shall perform professional services for the provision of data, website and eligibility services (Data and Eligibility Services). NCTCOG shall, during the Term of this Agreement, provide qualified staff and appropriate systems to perform Data and Eligibility Services. Data and Eligibility Services shall include, but are not limited to:
- Internet hosting, design and ongoing website maintenance services to the PEBC website, to include periodic modifications and updates, and corrections or design changes as requested by the PEBC;
  - Timely eligibility processing services to include acceptance of data from PEBC member groups and transmission of eligibility data to vendors including reconciliation, reports and data storage services;
  - Implementation services on behalf of new PEBC member groups and new PEBC vendors;
  - Development services including internet based online enrollment processes and systems, data standards, system architecture and process improvement;
  - System design, support and maintenance, regardless if performed by NCTCOG or a third-party vendor through a contract with NCTCOG;
  - System audits;
  - Maintain and update data integrity and security; and
  - Privacy and security compliance, as mandated by HIPAA privacy and security regulations applicable to protected health information received or maintained by PEBC and its members.
- B. **Ownership.** Services performed under this Agreement are for the sole and exclusive benefit of the member groups of the PEBC. All development and materials, electronic or otherwise, including graphics, text, manuals, software, modifications, system architecture, database scripts and edits and documentation, developed for the exclusive use of the PEBC or made available to NCTCOG on behalf of the PEBC, belong to the member entities of the PEBC. Any development and materials, including software, database scripts and edits developed by NCTCOG or developed by a third-party vendor contracted with NCTCOG, shall be held in escrow and returned to the PEBC, along with related work product and manuals, upon request, and upon termination of this Agreement.
- C. **Termination.** In the event this Agreement is terminated, NCTCOG shall, to its fullest extent, cooperate with and participate in transition activities in conjunction with the transfer of these services to another service provider.



**Attachment B**  
**Business Associate Agreement (“BA Agreement”)**

**I. Definitions**

- (a) Business Associate. “Business Associate” shall mean North Central Texas Council of Governments (NCTCOG).
- (b) Plan Sponsor. “Plan Sponsor” shall mean, collectively and individually, Dallas County, Tarrant County, Denton County, Parker County, the North Texas Tollway Authority, and any member group approved for membership in the PEBC.
- (c) Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (d) Privacy and Security Rules. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 64, subpart C.
- (e) Protected Health Information. “Protected Health Information”, or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created or received by the Business Associate from or on behalf of the Plan.
- (f) Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR 164.501.
- (g) Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (h) Plan. “Plan” shall mean the applicable component of the PEBC Plan(s) for which NCTCOG provides services, including clearinghouse services, which is/are a Covered Entity(ies) subject to the Privacy and Security Rules.
- (i) PEBC. “PEBC” shall mean the Public Employees Benefits Cooperative of North Texas, which acts as an agent of the Plan Sponsor as administrator of the Plan.
- (j) Interlocal Agreement. “Interlocal Agreement” shall mean the interlocal agreement between the member entities of the PEBC and the North Central Texas Council of Governments for the provision of dedicated staff and services related to the operation of the PEBC, and to which this Business Associate Agreement is made a part as an Exhibit.
- (k) Security Incident. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as defined in §164.304 of the Security Rule.
- (l) Administrative Safeguards. “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security

measures to protect electronic protected health information and to manage the conduct of the covered entity's workforce in relation to the protection of that information.

- (m) Physical Safeguards. "Physical Safeguards" are physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from nature and environmental hazards, and unauthorized intrusion.
- (n) Technical Safeguards. "Technical Safeguards" means the technology and the policy and procedures for its use that protect electronic protected health information and control access to it.
- (o) Electronic Protected Health Information. "Electronic Protected Health Information" is protected health information that is (i) transmitted by electronic media; or (ii) maintained in electronic media.
- (p) Breach Notification Rules. "Breach Notification Rules" shall mean the Standards for Notification in the Case of Breach of Unsecured Protected Health Information at 45 CFR part 164 subpart D.

## **II. Obligations and Activities of Business Associate**

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this BA Agreement, the Interlocal Agreement, or as Required by Law.
- (b) Business Associate acknowledges that it is obligated to comply with the standards set forth in §§164.502(e) and 164.504(e) of the Privacy Rule in the same manner that such sections apply to the Plan. Business Associate further acknowledges that §§164.308, 164.310, 164.312, and 164.316 of the Security Rule apply to the Business Associate in the same manner that such sections apply to the Plan.
- (c) Business Associate hereby represents that any Protected Health Information it shall seek from the Plan shall be the minimum necessary, as set forth in the Privacy Rule, for the Business Associate's stated purposes in its agreements with the Plan Sponsor and acknowledges that the Plan shall rely upon such representation with respect to any request by the Business Associate for PHI.
- (d) With respect to the use, disclosure, or request of Protected Health Information, Business Associate shall limit such PHI, to the extent practicable, to the limited data set as defined in 45 CFR §164.514(e)(2), or if needed, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, respectively.
- (e) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BA Agreement. Business Associate further agrees to implement appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Plan Sponsor. Such safeguards are to be consistent with the safeguards described in the Security Rule at §§164.308 through 164.312.
- (f) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BA Agreement.
- (g) Business Associate agrees to report to the Plan Sponsor and the PEBC, on behalf of the Plan, any use or disclosure of Protected Health Information not provided for by this BA Agreement of which

it becomes aware. Business Associate agrees to report to the Plan Sponsor and the PEBC, on behalf of the Plan Sponsor, any Security Incident of which it becomes aware, except that for the purposes of this BA Agreement a Security Incident shall not include any “scans” or “pings” that are stopped by the Business Associate’s firewall. Business Associate shall notify the Plan Sponsor and the PEBC:

- (1) Promptly and without unreasonable delay upon the Business Associate’s becoming aware of any use or disclosure of the Plan’s PHI or ePHI, not provided for by this BA Agreement or otherwise required by law, or
  - (2) Promptly and without unreasonable delay, but in no event more than forty-eight (48) hours of confirming any Security Incident involving the Plan’s ePHI.
- (h) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of the Plan, agrees to the same restrictions and conditions that apply through this BA Agreement to Business Associate with respect to such information. Business Associate shall further ensure that any such agent or subcontractor to whom Business Associate provides any such ePHI agrees in writing to implement reasonable and appropriate safeguards to protect such information; such safeguards are to be consistent with the safeguards described in the Security Rules at §§164.304 through 164.316.
- (i) Business Associate agrees to provide access, at the request of the Plan, and in a timely manner, to Protected Health Information in a Designated Record Set, including access to and transmission of PHI that is used or maintained as an electronic health record, to the Plan; to a representative of the Plan, including the PEBC or the Plan Sponsor, as directed by the Plan; or to an Individual in order to meet the requirements under 45 CFR 164.524, as amended.
- (j) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Plan directs or agrees to pursuant to 45 CFR 164.526, as amended, at the request of the Plan or an Individual, and in a timely manner.
- (k) Business Associate agrees to restrict disclosures of PHI, at the request of the Plan or an individual, and in a manner designated by the Plan, in a timely manner, in accordance with §164.522 of the Privacy Rule, as amended, when the Plan or the individual notifies the Business Associate of the request.
- (l) Business Associate agrees to make internal practices, books, and records, including policies and procedures, documentation of safeguards, and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, the Plan available to the Plan, or to the Plan’s designated representative, including the PEBC, or to the Secretary, in a timely manner or as otherwise designated by the Secretary, for purposes of the Secretary determining the Plan’s compliance with the Privacy and Security Rules.
- (m) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, as amended.

- (n) Business Associate agrees to provide to Plan, or its representative as directed by the Plan, including the PEBC, or an Individual, in a timely manner, information collected in accordance with Section II.m. of this BA Agreement during the six (6) years preceding the date of the request, or three (3) years with respect to a request for an accounting of payment, treatment or health care operations (except for disclosures occurring before the effective date of this BA Agreement), to permit the Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, as amended, including with respect to an accounting of disclosures through an electronic health record.
- (o) Following the discovery of a Breach of unsecured PHI, Business Associate shall notify the Plan and the PEBC of such Breach. The term “Breach” has the meaning set forth in 45 CFR §164.402.
  - (1) A Breach shall be treated as discovered by the Business Associate as of the first day on which such Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate.
  - (2) Except as otherwise provided for in the Breach Notification Rules, Business Associate shall provide the notification to the Plan and the PEBC promptly and without unreasonable delay; provided, however, that in no case shall the notification be made later than ten (10) calendar days after the discovery of a Breach. The notification shall include, to the extent possible, the following information:
    - (i) 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;
    - (ii) the date of discovery of the Breach;
    - (iii) description of the information Breached;
    - (iv) any steps the individuals should take to protect themselves;
    - (v) the steps Business Associate (or its agent) is taking to investigate the Breach, mitigate losses, and protect against future Breaches; and
    - (vi) a contact person and telephone number for more information.
  - (3) At the same time that Business Associate notifies the Plan and the PEBC of the Breach, or as promptly thereafter as information becomes available to Business Associate, Business Associate shall provide the Plan with any other available information that the Plan is required to include in its notification to the individual.
  - (4) If requested by the Plan or the PEBC, Business Associate shall, in accordance with §164.404 of the Breach Notification Rules, assist in the notification of individuals whose PHI was involved in

the Breach, or shall reimburse the Plan for reasonable costs associated with the Plan making such notifications.

- (p) Business Associate shall not receive, directly or indirectly, any remuneration in exchange for any PHI of an individual, unless Business Associate has obtained from the individual, in accordance with §164.508 of the Privacy Rule, a valid authorization that includes a specification that the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual.

### **III. Permitted Uses and Disclosures by Business Associate**

#### **A. General Use and Disclosure Provisions**

Except as otherwise limited in this BA Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Plan as specified in the Interlocal Agreement with the Plan Sponsor, provided that such use or disclosure would not violate the Privacy and Security Rules if done by the Plan or the minimum necessary policies and procedures of the Plan.

#### **B. Specific Use and Disclosure Provisions**

- (a) Except as otherwise limited in this BA Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this BA Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that such disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Except as otherwise limited in this BA Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services relating to the health care operations of the Plan as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

### **IV. Obligations of Plan and Plan Sponsor**

- (a) Plan Sponsor or PEBC, on behalf of the Plan, shall notify Business Associate of any limitation(s) in its notice of privacy practices of the Plan in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. The Plan may meet this obligation by providing Business Associate with a copy of the Notice of Privacy Practices which the Plan produces in accordance with the Privacy Rule.
- (b) Plan Sponsor or PEBC, on behalf of the Plan, shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

- (c) Plan Sponsor or PEBC, on behalf of the Plan, shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that the Plan has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

## **V. Permissible Requests by the Plan**

The Plan shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rules if done by the Plan, except that Business Associate may use and disclose protected health information for data aggregation and management and administrative activities of Business Associate as provided herein.

## **VI. Term and Termination**

- (a) Term. The Term of this BA Agreement shall be effective as of the date of the Interlocal Agreement between NCTCOG and PEBC, and shall terminate upon the later of (1) the termination of the Interlocal Agreement; or (2) when all of the Protected Health Information provided by the Plan or Plan Sponsor to Business Associate, or created or received by Business Associate on behalf of the Plan, is destroyed or returned to the Plan or its representative, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Cause. Upon the Plan's or Plan Sponsor's knowledge of a material breach by Business Associate, the Plan Sponsor, on behalf of the Plan, shall either:
  - (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BA Agreement and the Interlocal Agreement if Business Associate does not cure the breach or end the violation within the time specified by Plan Sponsor;
  - (2) Immediately terminate this BA Agreement and the Interlocal Agreement if Business Associate has breached a material term of this BA Agreement and cure is not possible; or
  - (3) If neither termination nor cure is feasible, Plan Sponsor, on behalf of the Plan, shall report the violation to the Secretary.
- (c) Business Associate shall have the same obligations as the Plan, as provided for in Section VI (b) above, with respect to a material breach by the Plan.
- (d) Effect of Termination.
  - (1) Except as provided in paragraph (2) of this section, upon termination of this BA Agreement or the Interlocal Agreement, for any reason, Business Associate shall return to the Plan or its designated representative or destroy all Protected Health Information received from the Plan or the Plan Sponsor or created or received by Business Associate on behalf of the Plan. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to the Plan notification of the conditions that make return or destruction infeasible. Business Associate shall extend the

protections of this BA Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## **VII. Miscellaneous**

- (a) Regulatory References. A reference in this BA Agreement to a section in the Privacy and Security Rules, or to the Breach Notification Rules, means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this BA Agreement from time to time as is necessary for the Plan to comply with the requirements of the Privacy and Security Rules under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended, and the Health Information Technology for Economic and Clinical Health Act, part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).
- (c) Survival. The respective rights and obligations of Business Associate under Section VI. (d) of this BA Agreement shall survive the termination of this BA Agreement.
- (d) Interpretation. Any ambiguity in this BA Agreement shall be resolved to permit the Plan to comply with the Privacy and Security Rules, and the Breach Notification Rules. The terms and conditions of this BA Agreement shall override and control any conflicting terms and conditions in any agreement between parties related to the Privacy and Security of PHI or ePHI.
- (e) Relationship of the Parties. The relationship between the Plan and Business Associate is that of independent contracting entities. Neither party is the agent or representative of the other, nor shall either party be liable for the acts or omissions of the other, its agents, or its employees.

## EXHIBIT C

### PEBC/NCTCOG Calendar Year 2023 BUDGET

<b>SALARY &amp; BENEFITS</b>	<b>\$ 865,311</b>
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<b>TOTAL INDIRECT COSTS</b>	<b>\$ 153,160</b>
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Indirect Costs are based on a formula percentage of Salary & Benefits. These costs include parking, conference room usage, and other costs associated with NCTCOG administrative services needed to support the PEBC program.

<b>DIRECT COSTS</b>	<b>\$ 814,012</b>
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Office Space	\$ 50,429
Furniture and Equipment	\$ 4,000
Supplies & Resources	\$ 2,500
Printing	\$ 1,500
Communications	\$ 5,000
In-Region Travel	\$ 1,000
Out-of-Region Travel	\$ 2,500
Postage	\$ 1,000
PEBC General Counsel	\$ 25,000
Employee Development	\$ 6,000
Network Services (Internet/RIS)	\$ 35,937
Annual Enrollment Communications	\$ 20,000
PEBC-NCTCOG Data and Eligibility Services	\$ 324,146
Core Consulting	\$ 285,000
Project Reserve	\$ 50,000

<b>TOTAL CY 2023 BUDGET (to be cost-shared)</b>	<b><u>\$ 1,832,483</u></b>
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## **EXHIBIT D**

### **North Central Texas Council of Governments Access to PEBC Group Long Term Care Insurance Plan**

During the period this Agreement is in force, the North Central Texas Council of Governments (“NCTCOG”):

- A. Shall pay premiums due to Prudential Insurance Company of America (“Prudential”) in a timely manner; and
- B. Shall confirm employee eligibility for plan benefits upon request by the PEBC.

The PEBC Board shall have sole authority to determine the coverage terms for the Long Term Care insurance available to PEBC members’ and NCTCOG’s eligible employees, retirees, and their eligible family members, except that new enrollment in the Prudential PEBC Group LTC coverage is not available after June 30, 2013. The PEBC Group LTC coverage is available to employees of NCTCOG subject to the terms and conditions of the underlying long term care plan (if any) offered through the PEBC.