

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No. _____

Originating Department:	Administrative Services
Division/Program: <i>(i.e. Dept, Division and Program)</i>	Human Resources
Contract or Grant Administrator:	Karen S. Goens, Human Resources Manager
Contractor's / Agency Name:	Healthcare Management Administrators, Inc.
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Contract Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): #19-57 Cost Center: 507340	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>139,441 in 2020; \$141,404 in 2021 & 2022</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: The Contractor will administer the County's self-insured medical plan. Services will include medical and prescriptions claim administration, network access for discounted services, care management services, on-line benefit information and COBRA administration.	
Term of Contract: January 1, 2020 Expiration Date: December 31, 2022	

- | | | |
|-------------------|---|-------------------------|
| Contract Routing: | 1. Prepared by: <u>Karen S. Goens</u> | Date: <u>11/06/2019</u> |
| | 2. Attorney signoff: <u>[Signature]</u> | Date: <u>11/7/2019</u> |
| | 3. AS Finance reviewed: <u>[Signature]</u> | Date: <u>11/7/19</u> |
| | 4. IT reviewed (if IT related): <u>N/A</u> | Date: _____ |
| | 5. Contractor signed: <u>Windsay Harris, FMAA</u> | Date: <u>11/6/2019</u> |
| | 6. Submitted to Exec.: <u>Karen S Goens</u> | Date: <u>11/7/2019</u> |
| | 7. Council approved (if necessary): _____ | Date: _____ |
| | 8. Executive signed: _____ | Date: _____ |
| | 9. Original to Council: _____ | Date: _____ |

**CONTRACT FOR SERVICES
Self-Insured Medical Program Administration**

Healthcare Management Administrators, Inc. (HMA), hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions	pp. 3 to 8,
Exhibit A (Scope of Work)	pp. 9 to 11,
Exhibit B (Compensation)	pp. 12 to 13,
Exhibit C (Certificate of Insurance)	p. 14,
Exhibit D (HIPAA Addendum)	pp. 15 to 22.

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of January, 2020, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2022.

The general purpose or objective of this Agreement is to: provide administrative and claims processing services for the self-insured medical program, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed base medical administration fees of \$ 36.25 per employee per month (PEPM) for 2020, and \$36.79 PEPM for 2021 and 2022. Other program fees are as outlined in Exhibit B. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this 4 day of November, 2019

CONTRACTOR:

HEALTHCARE MANAGEMENT ADMINISTRATORS, INC.


Lindsay Harris, Chief Growth Officer

CONTRACTOR INFORMATION:

HEALTHCARE MANAGEMENT ADMINISTRATORS, INC. (HMA)

Lindsay Harris, Chief Growth Officer
10700 Northup Way, Suite 100
Bellevue, WA 98005

Account Manager: Kathrine (Kat) Myers

Contact Phone: (425) 289-5131

Contact Email: Kathrine.Myers@accesstpa.com

Contract for Services
Medical Plan Administrator - HMA

WHATCOM COUNTY:

Recommended for Approval:



Karen S. Goens, Human Resources (HR) Manager

11/7/2019

Date

Approved as to form:



Chris Quinn, Senior Deputy Prosecutor

11/7/2019

Date

Approved:

Accepted for Whatcom County:

By: _____

Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 2019, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at _____
My commission expires _____.

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension:

The duration of this Agreement may be extended by mutual written consent of the parties for a total of no longer than six years from the inception of the contract (i.e., not beyond December 31, 2025).

11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Inadequate Reserves

In the event the County is unable to maintain necessary funding reserves for self-insurance, the County may unilaterally terminate this agreement. Should the County seek to terminate the agreement under this provision, the County shall provide written notice of its intent to terminate to the Contractor no later than ninety (90) days prior to the commencement date of the new plan year. If the contract is terminated based on inadequate reserves pursuant to this provision, the Contractor shall be entitled to compensation for continued service provided under the terms of this contract for a period of ninety (90) days following the effective date of termination for purposes of processing run-out claims for a period of twelve (12) months from the effective date of termination.

11.3 Termination for Public Convenience: Not applicable

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

- 30.3 No Guarantee of Employment:
The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.
- 31.1 Ownership of Items Produced:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.
- 31.2 Patent/Copyright Infringement: Not Applicable
- 32.1 Confidentiality:
The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision. Since April 14, 2004, provisions related to HIPAA privacy have been outlined in a Business Associate Agreement of the same general form as Exhibit "D" herein.
- 33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.
- The County shall give Contractor 60 days' prior written notice of its intent to perform such an audit and of its need for such information as reasonably necessary for the administration of the Plan. All audits and information disclosure shall occur at a reasonable time and place and at the County's sole cost and expense. Prior to commencement of any audit, all Auditors will be required to sign an HMA Auditor Agreement.
- The County hereby represents and warrants that, to the extent any disclosed information contains Protected Health Information (as defined by the Standards for Privacy of Individually Identifiable health Information promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA")) about a Plan Participant, the County has the legal authority to have access to such information.
- 34.1 Proof of Insurance:
The Contractor shall carry for the duration of this Agreement managed care errors and omissions liability insurance with the following minimums: Managed Care Errors & Omission Liability in an amount not less than \$1,000,000 per occurrence/\$2,000,000 annual aggregate.
- The required managed care errors and omissions insurance shall be maintained by the Contractor for the protection of the County, its officers, officials, employees, and agents.
- A Certificate of insurance is attached hereto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.
- 34.2 Industrial Insurance Waiver: Not Applicable
- 34.3 Defense & Indemnity Agreement:
The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, *or based upon*

fraudulent, criminal or willful acts of misconduct or its reckless or gross negligent acts or omissions in the performance of its duties, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees.

In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

The County shall hold the Contractor harmless from and indemnify it against any claims and all costs and expense or fees incurred in the connection therewith, which might be asserted by the Plans, County's employees or other persons which are beyond Contractor's control and beyond the scope of this agreement, *including claims arising out of the County's fraudulent, criminal or willful acts of misconduct or its reckless or gross negligent acts or omissions in the performance of its duties of this agreement.* The Contractor shall not be responsible for funding the County's benefit payments, County's lost profits, or extrapolations of improper benefit payments.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services: Not Applicable

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Karen Sterling Goens, HR Manager
Administrative Services Department – Human Resources
311 Grand Avenue - Suite 107 – Bellingham, WA 98225
(360) 778-5305 KGoens@co.whatcom.wa.us

or, in her absence or as designee:

Heidi Christie, HR Representative
HChristi@co.whatcom.wa.us
(360) 778-5311

37.2 Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor's Status under State Law: Not Applicable

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions: Not Applicable

38.3 E-Verify: Not Applicable

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to

the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:

Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"
(SCOPE OF WORK)
SECTION I.

The Plans / Relationship of the Parties

- 1.1 The County has established self-insured employee welfare benefit plans (the "Plans"), providing means by which eligible employees of the County can secure the benefits set forth in the Plans.
- 1.2 The County is the Plan Administrator and Named Fiduciary. The County shall oversee the administration of the Plans and shall have the exclusive right to interpret the terms of the Plans in accordance with the documents and instruments governing the Plans. The County shall determine eligibility for coverage and benefits and shall have final authority for approval or disapproval of any disputed or doubtful claim.
- 1.3 The Contractor *is acting solely in a ministerial capacity and shall have no discretionary authority or power to interpret ambiguities or conflicts that may exist in any provision of the Plans. The Contractor will provide the County with information to aid administration and Plan interpretation* including customer service records, assessments of medical necessity, application of industry practice, and other client advisories as applicable.

SECTION II.
Contractor's Services

- 2.1 The Contractor, within the scope of its duties under this agreement, shall provide services for and shall assist the County in the Administration of the Plans pursuant to the terms and conditions of the Plans as may be requested and authorized from time to time.
- 2.2 The Contractor shall prepare Summary Plan Descriptions (SPD) setting forth the benefits and rights of the Plan Participants. The SPDs shall be reviewed and approved by the County.
- 2.3 The Contractor agrees to provide the following claims processing and payment services to the County, including but not limited to:
 - a) Answer all telephone inquiries regarding eligibility and coverage under the Plans; respond to requests for forms and status inquiries on filed claims and benefit payments. Contractor will provide adequate customer services representatives between the hours of 6:00 a.m. to 6:00 p.m. PST, Monday through Friday, during non-holiday workweeks.
 - b) Receive and process claims for payment of covered benefits for Participants in accordance with the provisions of the Plans, for claims incurred on and after the commencement date as stated in the Agreement.
 - c) Communicate with Participants and health care providers as necessary to obtain any additional information deemed necessary to expedite the processing of claims.
 - d) Request and obtain from the County, as necessary, interpretations with respect to the provisions and questions of substance and procedure related to the Plans.
 - e) Issue and distribute checks to health care providers and Participants from funds supplied by the County, and provide appropriate Explanation of Benefits forms (EOBs) as applicable.
 - f) Provide written notice to a Plan Participant of any denial of a claim, in whole or in part, which includes the specific reason(s) for such denial and the opportunity for review of the denial.
 - g) Provide the County forms for use by Plan Participants in submitting claims to Contractor.
 - h) Provide for the coordination of benefits, subrogation collection activities, and collection of overpayments or improper payments made to any Participants, as reasonably possible.
 - i) Screen claims to avoid duplicate payments and maintain procedures that will assure consistency in claims payments in accordance with the Plans.
 - j) Prepare reports concerning Plan Participant benefits.

- k) If a fee is stated and accepted in "Exhibit B" (Compensation), Contractor will, for:
1. **"COBRA Administration,"** notify Participants of COBRA continuation coverage rights upon the occurrence of a qualifying event, as required by COBRA, as well as responsibility for calculation and collection of premiums for continuation coverage. All notices shall be made by U.S. First Class Mail to the individual's last known address. Plan Participants will be instructed on procedures for COBRA premium remittance. Upon receipt, Contractor will update the County's COBRA records.
 2. **"Administration of the Utilization Management Program,"** provide pre-authorization services in compliance with the "Plans," screen claims for medical necessity, and assist in making coverage determinations;
 3. **"Administration of Large Case Management,"** screen catastrophic and potentially high-dollar claims, assign length of stay and monitor admissions, promote appropriate patient care and optimize benefits usage.
 4. **"Managed Behavioral Health Services,"** provide pre-authorization services in compliance with the "Plans," screen claims for medical necessity, and assist in making coverage determinations.

2.4 **"Claims Negotiation, Hospital Bill Audit, and Repricing Services"**

The Contractor will conduct a Hospital Bill Audit on all In Network and Out of Network hospital bills that meet the threshold for review to eliminate duplicate and/or non-allowable charges. All other Out of Network provider or facility claims will be immediately forwarded to a third-party vendor who will attempt to reprice and discount each claim or engage in fee reduction negotiations. There will be no cost for the provision and coordination of this service for claims that experience no repricing or negotiated savings.

- 2.5 The Contractor, at the election of and subject to the approval of the County, shall work with the County's benefit consultant for the purchase of policies of insurance to provide any of the benefits provided for in this agreement, the Plans, or the Trust. The premium for these policies of stop-loss or individual and aggregate excess risk or similar type of insurance shall be paid by the County.
- 2.6 The Contractor shall not be required to assist the County and / or the Administrator in the preparation or filing of any report, returns, tax returns, or similar papers required by any local political subdivision, state or the Federal Government pertaining to the operation or management of the Plans.
- 2.7 The Contractor shall render monthly reports to the County that shall include the following:
- a) Disbursements, by category, made or authorized by the Contractor from the Plans;
 - b) A statement of the fees due the Contractor.
- 2.8 The Contractor shall maintain and pay the cost of a fidelity bond in the amount of not less than One Hundred Thousand Dollars (\$100,000.00) covering the Contractor and any of its agents or employees who may collect, disburse, or otherwise handle or have the authority to authorize or order disbursements or payments on behalf of the Plans.
- 2.9 The Contractor shall be responsible for the review of all denials requested to be reviewed. The final determination of the Contractor made in accordance with Plan procedures on any application for benefits is final and conclusive upon the Covered Person, subject only to the final review by the County. The Contractor shall be the primary contact for answering questions regarding benefits available under the Plans.

SECTION III.
Fees to Contractor

- 3.1 **Fees for Claims Processing.** As compensation for the administration and claims processing services above, the Contractor shall be entitled to fees set forth in Exhibit B ("Compensation"). Fees shall be based on the number of Participants enrolled under the plan on the first day of the month in which services are being billed.
- 3.2 **Fees for Other Administrative Services.** If the County requests any other administrative services from Contractor, and Contractor agrees to provide such services, the parties shall mutually agree upon a fee schedule for such services.
- 3.3 **Fees from Outside Vendors.** The Contractor shall be entitled to a portion of the fees charged by outside vendors including but not limited to Drug Card Companies and Preferred Provider Organizations.

- 3.4 **Fees for Repricing of Out of Network Claims.** Contractor shall be entitled to retain 30% (thirty percent) of the gross savings obtained on all out of network claims that are repriced, reduced by negotiation, or reduced due to audit. The remaining 70% (seventy percent) of savings will be passed on to the County in the form of reduced claims costs. There will be no cost to the County for this service for claims that experience no repricing or negotiated savings.
- 3.5 **Appeals and other PPACA Related Fees.** Any fees incurred by Contractor on behalf of the Plan for appeal related services, including but not limited to costs incurred by an Independent Review Organization, as well as fees incurred as a result of PPACA mandated services (i.e. language translation assistance services) shall be the sole responsibility of the County.
- 3.6 **Right to Change Fees.** Contractor shall not have a right to change any fees charged to the County except as of the first day of any Renewal Term and/or by mutual agreement of the parties.

SECTION IV. County's Requirements

- 4.1 The County shall notify the Contractor on a monthly or more frequent basis of all changes in participation whether by reason of termination, change in classification, or any reason.
- 4.2 The County is responsible for providing accurate and timely eligibility information, and timely review and approval of the SPD, Plan Summaries, and Amendments. Claims processed according to duly approved plan documents, instructions from the County, or based on information provided by the County or authorized representative of County shall be the sole responsibility of County.
- 4.3 The County shall assist in the enrollment of Participants in the Plans, cooperate with the Contractor with regard to proper settlement of claims, and transmit any inquiries pertaining to the Plans to the Contractor. The Contractor shall provide and the County shall maintain a supply of forms, enrollment cards or other documents and shall distribute or make available such documents.
- 4.4 The County shall provide, directly or through the Contractor, all materials and documents, including summaries for employees, reports and applications and notice forms, as may be necessary or convenient for the operation of the Plans or to satisfy the requirements of governing law.
- 4.5 The County shall fund benefit claims and other authorized costs and expenses incurred by Contractor within ten (10) business days.
- 4.6 The County shall pay premiums for excess loss insurance.
- 4.7 The County shall pay applicable taxes, if any.

SECTION V Compliance with Laws

- 5.1 The County, as the Plan Sponsor and the Plan Administrator, represents and warrants that the Plans presently comply with all applicable federal, state and local laws and regulations, specifically including, without limitation, Mental Health Parity and Addiction Equity Act ("MHPAEA"), Patient Protection and Affordable Care Act ("PPACA") the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), HIPAA and HITECH, and covenants and agrees that it will, at its sole cost and expense, take all action necessary to cause the Plans' continued compliance with all applicable federal, state and local laws and regulations during the term of this Agreement. The County is solely responsible for obtaining any actuarial analysis, non-discrimination testing, or actuarial determinations required by the Plans.

EXHIBIT "B"
(COMPENSATION)

Rates are Per Employee Per Month (PEPM) unless otherwise noted. These fees shall remain in effect for above stated term unless changed by mutual agreement of the parties. Rate guarantee for contracted time period applies only to services performed by HMA. Fees for outside vendors are subject to change at any time.

Service	2020	2021	2022
Medical Plan Administration (MPA)	\$27.10	\$27.64	\$27.64
Network Access (HMA Preferred or PHCS National)	\$5.50	\$5.50	\$5.50
Care Management Base Services (Preauthorization, Large Case Management and Managed Behavioral Health Services)	\$3.65	\$3.65	\$3.65
Claim Bank Account Reconciliation	Included	Included	Included
Plan Documents (SPD and SBC)	Included	Included	Included
Pharmacy Benefit Management (PBM) Administration	Included	Included	Included
Stop Loss Administration	Included	Included	Included
COBRA Administration	\$1.10	\$1.10	\$1.10
MDLive Telehealth (Medical Only)	\$1.00	\$1.00	\$1.00
Administrative Cost PEPM	\$38.35	\$38.89	\$38.89

Cost by Service	2020	2021	2022
Enrollment	303	303	303
Medical Plan Administration	\$ 98,536	\$ 100,499	\$ 100,499
Network Access	\$ 19,998	\$ 19,998	\$ 19,998
Case Management Base Services	\$ 13,271	\$ 13,271	\$ 13,271
COBRA Administration	\$ 4,000	\$ 4,000	\$ 4,000
MDLive Telehealth	\$ 3,636	\$ 3,636	\$ 3,636
Renewal Cost – Annualized	\$ 139,441	\$ 141,404	\$ 141,404

Other Costs – if applicable

- 30% of savings Claims Negotiation, Hospital Bill Audit, Out of Network Claims Re-Pricing
- 27% of Recovered Funds for Subrogation Services
- 10-18% Overpayment Prevention & Recovery
- 30% Fraud, Waste, and Abuse

CVS Caremark Pharmacy Benefit Claim Administration

Pharmacy Pricing Components	PPO or HDHP
Retail Pharmacy – National Network	
Brand - Flat Discount	AWP – 18.50%
Generic - Flat Discount	AWP – 85.50%
Dispensing Fee per Claim	\$0.60
Mail Order Pharmacy	
Brand - Flat Discount	AWP – 24.5%
Generic - Flat Discount	AWP – 87.50%
Dispensing Fee per Claim	No fee
Specialty Pharmacy	
Specialty Discount	Specialty drug discount rates vary by medication and are proprietary. Typical rates are: <u>Exclusive CVS Specialty:</u> AWP - 17% <u>Open Specialty:</u> AWP - 16%
Dispensing Fee per Claim	No fee
Client Rebates per Brand Claim	
<i>Rebate amounts vary depending on tier structure, formulary choice, and certain elective programs. Rebate amounts below are for 3 Tier Qualifying Structure, Standard Formulary, and no Step Therapy or Maintenance Choice.</i>	
3 Tier Retail, Non-Specialty and Specialty not filled by CVS Specialty pharmacy	\$179.00
3 Tier Mail Order	\$581.00
3 Tier Specialty filled by CVS Specialty pharmacy	\$1,123.00
THE FOLLOWING COMPONENTS APPLY ONLY TO CLIENTS THAT OWN PHARMACIES:	
Client-Owned Pharmacy Claims	
Brand, Generic, and Dispensing Fee	Pass-Through Rates and Fees
Administrative Fee per Claim	\$1.50
Rebate per Brand Claim, all Claims (Retail, Mail, and Specialty; 3 Tier Structure, Standard Formulary, no Step Therapy or Maintenance Choice)	\$179.00

Additional PBM fees for services:

- Paper claims, manual processing fee of \$1.50 per claim
- Custom mailing requests to assist a client on a member mailing project, current postage rate could apply
- Prior Authorization, \$30.00 per PA; fee doesn't apply to specialty drug claims when client with Exclusive CVS Specialty pharmacy elects Specialty Guideline Management (SGM) program
- Appeals: Determination of Prescription Benefit Coverage and Eligibility, \$100 per appeal; Independent Physician Specialist Review or IRO (Independent Review OHMANization) External Review, \$500 per appeal
- If client chooses to move to another PBM, there are industry-standard fees for optional files of member data including Open Refills (\$4500), Claims History (\$2500 for last rolling 12 months), Prior Authorizations (\$3,500), and Account Balances (\$2,500).

If improved pricing for this contract is effective prior to Client's renewal date, HMA will extend this pricing to Client.

In the event the County terminates the Administrative Services Agreement with HMA, HMA may use pharmacy rebates as a set-off against amounts due HMA from the County or may delay remittance of these rebates to allow for final adjustments.

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)

EXHIBIT "D"
(HIPAA ADDENDUM)

BUSINESS ASSOCIATE AGREEMENT

1. **Effective Date.** This Addendum shall be effective on September 1, 2013.
2. **HIPAA Privacy Rule Compliance.** The parties acknowledge that for purposes of fulfilling the obligations of Healthcare Management Administrators (HMA) to Whatcom County (Plan Sponsor) and its Group Health Plan (GHP) under this Addendum, HMA is the Business Associate of GHP. The parties therefore desire to bring the Administrative Services Agreement between HMA and Plan Sponsor (Agreement) into compliance with (i) the Health Insurance Portability and Accountability Act of 1996, its implementing Administrative Simplification regulations (45 C.F.R. Parts 160-164, Subparts A and E), and (ii) the requirements of the Health Information Technology for Economic and Clinical Health ("HITECH") Act, as incorporated in the American Recovery and Reinvestment Act of 2009, along with any guidance and/regulations issued by the U.S. Department of Health and Human Services ("DHHS"), as well as any other state or federal privacy laws applicable to the relationship among Plan Sponsor, GHP, and HMA. The Implementing Regulations, the HITECH Act, and the Final Regulations are collectively referred to in this Addendum as "the HIPAA Requirements." GHP, Plan Sponsor and Business Associate agree to incorporate into this Addendum any regulations issued by DHHS with respect to the HITECH Act that relate to the obligations of business associates and that are required to be (or should be) reflected in the business associate agreement.
3. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.
 - 3.1 **Breach.** Breach shall mean, as defined, in 45 C.F.R. § 164.402, the acquisition, access, use or disclosure of Unsecured Protected Health Information in a manner not permitted by the HIPAA Requirements that compromises the security or privacy of that Protected Health Information.
 - 3.2 **Business Associate.** Business Associate has the meaning set forth in 45 C.F.R. §160.103.
 - 3.3 **Business Associate Subcontractor.** Business Associate Subcontractor shall mean, as defined in 45 C.F.R. § 160.103, any entity (including an agent) that creates, receives, maintains or transmits Protected Health Information on behalf of HMA.
 - 3.4 **Electronic PHI.** Electronic PHI shall mean, as defined in 45 C.F.R. § 160.103, protected health information that is transmitted or maintained in any electronic media.
 - 3.5 **Group Health Plan.** Group Health Plan means the Whatcom County Employee Health Care Plan.
 - 3.6 **Individual.** Individual shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
 - 3.7 **Limited Data Set.** Limited Data set shall mean, as defined in 45 C.F.R § 164.514(e), Protected Health Information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual: Names; postal address information other than town or city, State, and zip code; telephone numbers; fax numbers; electronic mail addresses; social security numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate or license numbers; vehicle identifiers and serial numbers, including license plate numbers; devise identifiers and serial numbers; web universal resource locators (URLs); internet protocol (IP) address numbers; biometric

identifiers, including finger and voice prints; and full-face photographic images and any comparable images.

- 3.8 **Protected Health Information.** Protected Health Information means individually identifiable health information created or received by HMA in the performance of its obligations under the Agreement on behalf of GHP from which the identity of an individual can reasonably be determined, including all information within the statutory meaning of Protected Health Information (45 CFR §160.103). The term "Protected Health Information" or "PHI" in this Addendum shall mean both Electronic PHI and non-electric PHI, unless another meaning is clearly specified.
- 3.9 **Plan Sponsor.** Plan Sponsor means Whatcom County.
- 3.10 **Privacy Rule.** Privacy Rule means the standards for privacy set forth in 45 CFR Part 160 and Part 164, Subparts A and E.
- 3.11 **Regulatory References.** A reference in this Addendum to a section in the Privacy Rule or the HITECH act means the section as in effect or as amended, and for which compliance is required.
- 3.12 **Secretary.** Secretary means the Secretary of the Department of Health and Human Services or his designee.
- 3.13 **Security Incident.** Security incident shall mean, as defined in 45 C.F.R. § 164.304, the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- 3.14 **Summary Health Information.** Summary Health Information shall mean information, which may be Protected Health Information that: 1) summarizes claims history, claims expenses, or types of claims for whom Employer has provided health care benefits under the GHP; and 2) from which the identifiers specified in 45 CFR §164.514(b)(2)(i) have been deleted (except that zip codes can be aggregated to the level of a 5-digit zip code).
- 3.15 **Unsecured Protected Health Information.** Unsecured Protected Health Information shall mean, as defined in 45 C.F.R. § 164.402, Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by DHHS.
- 3.16 **All other terms** used in this Addendum shall have the meanings set forth in the applicable definitions under the HIPAA Requirements.

4. **General Terms**

- 4.1 In the event of an inconsistency between the provisions of this Addendum and a mandatory term of the HIPAA Requirements (as these terms may be expressly amended from time to time by the DHHS or as a result of interpretations by DHHS, a court, or another regulatory agency with authority over the Parties), the interpretation of DHHS, such court or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with the rules of precedence.
- 4.2 Where provisions of this Addendum are different than those mandated by the HIPAA Requirements, but are nonetheless permitted by the HIPAA Requirements, the provisions of this Addendum shall control.

4.3 Except as expressly provided in the HIPAA Requirements, or this Addendum, this Addendum does not create any rights in third parties.

5. **HMA Obligations and Application Of The Standards For Electronic Transactions.**

5.1 **Permitted Uses and Disclosures.** HMA shall not use or further disclose Protected Health Information other than as: 1) permitted in writing by GHP; 2) authorized by an individual; 3) Required by Law; or 4) as permitted in this section as follows:

5.1.1 HMA agrees to create, receive, use, disclose, maintain, or transmit PHI in order to perform functions, activities, or services for, or on behalf of, GHP as specified in the Agreement or this Addendum, provided that such use or disclosure would not violate the HIPAA Requirements.

5.1.2 For the proper management and administration of HMA, or to carry out the legal responsibilities of HMA, provided that disclosures are required by law, or HMA 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 HMA of any instances of which it is aware in which the confidentiality of the information has been breached;

5.1.3 To provide Data Aggregation services to GHP as permitted by 45 CFR § 164.504(e)(2)(i)(B).

5.2 **Protected Health Information to Plan Sponsor.** GHP specifically authorizes HMA to make disclosures of Protected Health Information to Plan Sponsor made in accordance with Section 7 of this Addendum.

5.3 **Protected Health Information to Business Associates of GHP or Employer.** GHP and Plan Sponsor specifically authorize HMA to disclose Protected Health Information to those Business Associates of GHP or Plan Sponsor identified in Exhibit 2 ("Designated Business Associates"). GHP or Plan Sponsor may revise Exhibit 2 upon advance written notice to HMA. GHP and Plan Sponsor are solely responsible for ensuring that Designated Business Associates comply with the applicable requirements of the Privacy Rule. HMA shall not be liable for any damages arising from HMA's disclosure of Protected Health Information to a Designated Business Associate.

5.4 **Minimum Necessary.** HMA will make reasonable efforts to use, disclose, or request only the minimum necessary Protected Health Information to accomplish the intended purpose. HMA agrees to utilize a Limited Data Set if practicable.

5.5 **Safeguards.** HMA shall implement appropriate safeguards, and comply with the Security Standards (Subpart C of 45 C.F.R. Part 164) with respect to Electronic PHI, as necessary to prevent use or disclosure of the Protected Health Information in violation of this Addendum. HMA shall report to GHP any breach of the use or disclosure of PHI under this Addendum, including reporting Breaches of Unsecured Protected Health Information as required by 45 C.F.R § 164.410 and as required by Section 8 below.

5.6 **Flow-Down Obligations of Business Associate Subcontractors.** HMA agrees that as required by the HIPAA Requirements, HMA will enter into a written agreement with all Business Associate Subcontractors that: (i) requires them to comply with Privacy and Security provisions of this Agreement in the same manner as required of HMA, and (ii) notifies such Subcontractors that they will incur liability under the HIPAA Requirements for non-compliance with such provisions. Accordingly, HMA shall ensure that all Subcontractors agree in writing to the same privacy and security restrictions, conditions and requirements that apply to HMA with respect to PHI.

- 5.7 **Standard Transactions.** HMA will not enter into any trading partner agreement in connection with the conduct of Standard Transactions (as defined in 45 CFR, Part 162) for or on behalf of GHP that: (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is not permitted in a Standard Transaction; or, (iv) changes the meaning or intent of a Standard Transaction or its implementation specification. Additionally, HMA will require any Business Associate Subcontractor involved with the conduct of such Standard Transactions to comply with each applicable requirement of 45 C.F.R. Part 162.
- 5.8 **Inspection of Books and Records.** So GHP may meet its access obligations to the Secretary under 45 CFR §160.310, HMA shall make internal practices, books, and records relating to the use and disclosure of Protected Health Information created or received by HMA on behalf of GHP available to the Secretary, in a reasonable time and manner, for purposes of the Secretary determining compliance with the Privacy Rule by GHP.
- 5.9 **Access.** So GHP may meet its access obligations to Individuals under 45 CFR §164.524, HMA shall provide access at the request of GHP, and in a reasonable time and manner, to an Individual to his or her Protected Health Information.
- 5.10 **Amendment.** So GHP may meet its amendment obligations under 45 CFR §164.526, HMA shall make any amendment(s) to Protected Health Information as directed by GHP, or as requested by an Individual, in a reasonable time and manner, in accordance with the law.
- 5.11 **Accountings.** So GHP may meet its amendment obligations under 45 CFR §164.528, HMA shall document disclosures of Protected Health Information and information related to disclosures that would be required for GHP to respond to a request by an Individual for an accounting of disclosures of Protected Health Information. HMA will make available disclosure accountings for a period of 6 years prior to the date of request, but such accountings will not include disclosures prior to April 14, 2003.

For repetitive disclosure of Protected Health Information for a single purpose to the same recipient, HMA may record the first disclosure along with the frequency and duration of subsequent disclosures.

This accounting requirement does not apply to disclosures: (i) permitted or required by this Addendum for purposes of GHP payment or health care operations; (ii) to the individual who is the subject of the Protected Health Information disclosed or to that individual's personal representative; (iii) to persons involved in that individual's payment or treatment of health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes; or (vi) to law enforcement officials or correctional institutions regarding inmates; (vii) pursuant to an authorization; (viii) for disclosures of certain PHI made as part of a limited data set; (ix) and for certain incidental disclosures that may occur where reasonable safeguards have been implemented.

- 5.12 **Privacy Notice.** So GHP may meet its amendment obligations under 45 CFR §164.520, HMA will, upon the written request of Plan Sponsor or GHP, assist GHP in preparing Notices of Privacy Practices, including a statement of whether GHP discloses or authorizes HMA to disclose Protected Health Information to Plan Sponsor. GHP will be solely responsible for review and approval of the content, and distribution of the Notices, including that their content accurately reflects GHP's privacy policies, procedures and practices and complies with all requirements of 45 CFR §164.520. HMA may charge Plan Sponsor a fee for this service and shall make the fee known to Plan Sponsor at the time of the written request.
- 5.13 **Standards For Electronic Transactions.** In connection with the services to be provided to Whatcom County (Plan Sponsor) and its Group Health Plan as identified in this agreement, HMA agrees that if

it (or Business Associate Subcontractor) conducts an electronic transmission for which the Secretary of the Department of Health and Human Services has established a "standard transaction," HMA (or Business Associate Subcontractor) shall comply with the requirements of the Standards for Electronic Transactions (45 C.F.R. parts 160 and 162).

- 5.14 **Transmissions of Standard Transactions.** HMA agrees that, in connection with the transmission of standard transactions, it will not (and will not permit any Business Associate Subcontractor with which it might contract to):
- 5.14.1 Change the definition, data condition, or use of a data element or segment in a standard transaction;
 - 5.14.2 Add any data elements or segments to the maximum defined data set;
 - 5.14.3 Use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification; or
 - 5.14.4 Change the meaning or intent of the standard's implementation specification(s).
- 5.15 **Modifications to Standard Transactions by DHHS.** HMA understands and agrees that from time-to-time the Department of Health and Human Services might modify the standard transactions now identified in 45 C.F.R. §§ 162.1101 through 162.1802. HMA (and any Business Associate Subcontractor) agrees to abide by any changes to such standard transactions that might be applicable to the services to be supplied in connection with the Agreement.
- 5.16 **Security Incidents.** HMA shall report any Security Incident of which it becomes aware to GHP if that incident relates to electronic Protected Health Information subject to the following:
- 5.16.1 For security incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for purposes of example and not for purposes of limitation, pings on HMA's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses) (hereinafter "Unsuccessful Security Incidents"), HMA shall aggregate the data and, upon the GHP's written request, report to the GHP in accordance with the reporting requirements identified in Section 8.
 - 5.16.2 HMA will take all commercially reasonable steps to mitigate, to the extent practicable, any harmful effect that is known to HMA resulting from a Security Incident;
 - 5.16.3 HMA will permit termination of this Addendum if the GHP determines that HMA has violated a material term of this Addendum with respect to HMA's security obligations and HMA is unable to cure the violation; and
 - 5.16.4 Upon GHP's request, HMA will provide GHP with access to and copies of documentation regarding HMA's safeguards for PHI and Electronic PHI
- 5.17 **Security of Electronic Protected Health Information.** HMA will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of GHP, as required under 45 CFR Part 164, Subpart C. Additionally, HMA will implement policies and procedures that meet the Security Standards documentation per HIPAA Requirements. As

also provided for in Section 5.6 above, HMA ensures any Business Associate Subcontractor agrees to implement reasonable and appropriate safeguards to protect Electronic PHI.

6. **GHP and Plan Sponsor Obligations.**

- 6.1 **Privacy Notice.** GHP shall provide HMA with a copy of the notice of privacy practices that GHP produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
- 6.2 **Changes to, or Revocations of, Protected Health Information.** GHP shall provide HMA with any changes to, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect HMA's permitted or required uses and disclosures.
- 6.3 **Restrictions to Protected Health Information.** GHP shall notify HMA of any restriction to the use or disclosure of Protected Health Information that GHP has agreed to in accordance with 45 CFR § 164.522.
- 6.4 **Permissible Requests.** GHP shall not request HMA to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule.
- 6.5 **Plan Sponsor Obligations.** Plan Sponsor retains full and final authority and responsibility for GHP and its operation. HMA is empowered to act on behalf of GHP only as stated in the Agreement or this Addendum.

7. **Disclosure to Plan Sponsor**

- 7.1 **Receipt of De-Identified Information.** HMA may disclose De-identified Information, as defined in 45 C.F.R. §164.514, to Plan Sponsor without Plan Sponsor's certification of compliance with the Privacy Rule.
- 7.2 **Receipt of Summary Health Information.** Upon Plan Sponsor's written request, HMA may disclose Summary Health Information to Plan Sponsor without Plan Sponsor's certification of compliance with the Privacy Rule. Plan Sponsor may use Summary Health Information only to: 1) obtain premium bids for GHP; or 2) amend, modify, or terminate GHP.
- 7.3 **Receipt of Protected Health Information.** Plan Sponsor's access to, or receipt of, Protected Health Information creates Plan Sponsor obligations under the Privacy Rule and HMA may only provide such information to Plan Sponsor upon receiving Plan Sponsor's signed certification of compliance with the Privacy Rule as set forth in attached Exhibit 1. Exhibit 1 is incorporated into this Addendum by this reference.

8. **Breach of Privacy or Security Reporting Obligations.**

- 8.1 **Report.** HMA will report to GHP (in the manner and within the timeframes described below) any breaches of unsecured PHI and any breach or acquisition, access, use or disclosure of PHI as defined by 45 C.F.R. §164.402. Where a breach is presumed under the regulations for acquisition, access, use or disclosure in a manner that is not permitted by Privacy and Security Rules, such breaches will not be disclosed if, following a risk assessment by HMA as set forth in regulation, there is a low probability that PHI has been compromised.
- 8.2 **Notice of Breach.** HMA will notify GHP following discovery and without unreasonable delay but in no event later than ten (10) calendar days following discovery, any "breach" of "unsecured Protected Health Information," as set forth in 8.1 above. Breaches by a Business Associate Subcontractor will be reported within ten days following report to HMA. HMA shall cooperate with GHP in investigating the Breach and in meeting the GHP's obligations under the HITECH Act and any other security breach notification laws.

HMA shall follow its notification to the GHP with a report that meets the requirements outlined immediately below.

- (A) For Successful Security Incidents and Breaches, HMA – without reasonable delay and in no event later than thirty (30) calendar days after HMA learns of such non- permitted use or disclosure (whether at HMA or at Business Associate Subcontractor) – shall provide GHP a report that will:
- (i) Identify (if known) each individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been accessed, acquired, or disclosed;
 - (ii) Identify the nature of the non-permitted access, use, or disclosure including the date of the incident and the date of discovery;
 - (iii) Identify the PHI accessed, used, or disclosed (e.g., name; social security number; date of birth);
 - (v) Identify what corrective action HMA took or will take to prevent further non-permitted accesses, uses, or disclosures;
 - (vi) Identify what HMA did or will do to mitigate any deleterious effect of the non-permitted access, use, or disclosure; and
 - (vii) Provide other such information, including a written report, as GHP may reasonably request.
- (B) For Unsuccessful Security Incidents of which we are aware, HMA shall provide GHP, upon its written request, a report that: (i) identifies the categories of Unsuccessful Security Incidents as described in Section 5.16.1; (ii) indicates whether HMA believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such incidents; and (iii) if the security measures are not adequate, the measures HMA will implement to address the security inadequacies.

9. Term and Termination.

- 9.1 **Term.** The term of this Addendum shall be the same as the Agreement. Upon termination of the Agreement, the terms of this Addendum shall remain in effect until all of the Protected Health Information provided by GHP to HMA, or created or received by HMA on behalf of GHP, is destroyed or returned to GHP, or, if HMA claims 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.
- 9.2 **Termination for Breach.** In addition to the termination rights set forth in the Agreement, upon Plan Sponsor's or GHP's knowledge of a material breach of this Addendum by HMA, Plan Sponsor shall either: 1) provide HMA with written notice and an opportunity for HMA to cure the breach or end the violation and terminate the Agreement if HMA does not cure the breach or end the violation within the time specified in writing by GHP; or 2) immediately terminate the Agreement if HMA has breached a material term of this Addendum and cure is not possible. GHP agrees that HMA shall have the right to terminate this Addendum or seek other remedies if GHP commits a material breach of this Addendum.
- 9.3 **Effect of Termination.** Upon termination of the Agreement, for any reason, HMA shall return or destroy all Protected Health Information received from GHP, or created or received by HMA on behalf of GHP. HMA shall retain no copies of the Protected Health Information EXCEPT in the event HMA determines

HMA shall retain no copies of the Protected Health Information EXCEPT in the event HMA determines that returning or destroying the Protected Health Information is infeasible, HMA shall extend the protections of this Addendum and the HIPAA Requirements 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 HMA maintains such Protected Health Information.

10. **Amendment.** The Parties shall take such action as is necessary to amend the Agreement or this Addendum as necessary to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191.
11. **Continuing Privacy and Security Obligations.** HMA and GHP's obligations to protect the privacy and security of PHI it created, received, maintained, or transmitted in connection with services to be provided under the Agreement or this Addendum, will be continuous and survive termination of this Addendum or the Agreement.
12. **Interpretation.** Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits GHP to comply with the Privacy and Security Rules.
13. **Counterparts.** This Addendum may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.