ADDENDUM A:
HIPAA/HITECH PRIVACY & SECURITY ADDENDUM TO THIRD PARTY ADMINISTRATION AGREEMENT

1. **Effective Date.** This Addendum shall be effective on *February 17, 2010.*

2. **HIPAA Privacy Rule Compliance.** The parties acknowledge that for purposes of fulfilling the obligations of Healthcare Management Administrators (HMA) to Everett School Employee Benefit Trust (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. 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 **Business Associate**. Business Associate has the meaning set forth in 45 C.F.R. §160.103.

   3.2 **Electronic PHI**. Electronic PHI shall mean protected health information that is transmitted or maintained in any electronic media, as this term is defined in 45 CFR § 160.103.

   3.3 **Group Health Plan**. Group Health Plan means the Everett School Employee Benefit Trust's Medical Benefit Plan.

   3.4 **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).

   3.5 **Limited Data Set**. Limited Data set shall mean 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.

   3.6 **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 §164.501). 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.

3.7 **Plan Sponsor**. Plan Sponsor means Everett School Employee Benefit Trust.

3.8 **Privacy Rule.** Privacy Rule means the standards for privacy set forth in 45 CFR Part 160 and Part 164, Subparts A and E.

3.9 **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.

3.10 **Secretary**. Secretary means the Secretary of the Department of Health and Human Services or his designee.

3.11 **Security Incident**. Security incident shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

3.12 **Summary Health Information**. Summary Health Information means 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).

3.13 **All other terms** used in this Addendum shall have the meanings set forth in the applicable definitions under the HIPAA regulations and /or the security and privacy definitions of the HITECH Act that are applicable to business associates along with any relevant regulations issues by the DHHS.

4. General Terms

4.1 In the event of an inconsistency between the provisions of this Addendum and a mandatory term of the HIPAA regulations (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 Regulations or the HITECH Act, but are nonetheless permitted by the Regulations or the Act, the provisions of this Addendum shall control.

4.3 Except as expressly provided in the HIPAA Regulations, the HITECH Act, 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 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 Privacy Rule or the HITECH Act if done by GHP as a Covered Entity as defined in the Privacy Rule;

5.1.2 For the proper management and administration of HMA or to carry out the legal responsibilities of HMA;

5.1.3 For the proper management and administration 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;

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

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 use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Addendum.

5.6 **Agents and Subcontractors.** HMA shall ensure that any of its agents, including a subcontractor, to whom it provides Protected Health Information that is created or received by HMA on behalf of GHP, shall agree to the same restrictions and conditions that apply through this Addendum to HMA with respect to such information.

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, § 160.103) 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.

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 Everett School Employee Benefit Trust (Plan Sponsor) and its Group Health Plan as identified in this agreement, HMA agrees that if it (or an agent or subcontractor) conducts an electronic transmission for which the Secretary of the Department of Health and Human Services has established a "standard transaction," HMA (or its agent or 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, agent, or 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 agent or 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 if that incident relates to electronic Protected Health Information subject to the protections of this Addendum. "Security Incident" shall have the same meaning as defined in 45 CFR §§ 164.304.

5.16.1 For any 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.

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 requirements as required by the HITECH Act.

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 **Notice and reporting to GHP.** HMA will notify and report to GHP (in the manner and within the timeframes described below) any use or disclosure of PHI not permitted by this Addendum, by applicable law, or permitted in writing by GHP.

8.2 **Notice to GHP.** HMA will notify GHP following discovery and without unreasonable delay but in no event later then ten (10) calendar days following discovery, any "breach" of "unsecured Protected Health Information" as these terms are defined by the HITECH Act and any implementing regulations. 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 any other use or disclosure of unsecured PHI that is not permitted by this Addendum, the Agreement, by applicable law, or without the prior written approval of GHP, HMA – without reasonable delay and in no event

later than thirty (30) days after HMA learns of such non-permitted use or disclosure – 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 during such Breach;

(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);

(iv) Identify who made the non-permitted access, use, or received the non-permitted disclosure;

(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 it's 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 Cause. 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.

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. [This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of HMA]. 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 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.

SIGNATURE PAGE FOLLOWS

EVERETT SCHOOL EMPLOYEE BENEFIT TRUST'S MEDICAL BENEFIT PLAN

_____
Signature

_____
Name

_____
Title

_____
Date

EVERETT SCHOOL EMPLOYEE BENEFIT TRUST

_____
Signature

_____
Name

_____
Title

_____
Date

HMA

_____
Signature

Clay Ellis
Name

Sr. Vice President/COO
Title

_____
Date