

## ADMINISTRATIVE SERVICES AGREEMENT

**DATE:** February 4, 2011

**PARTIES:** Everett School Employees Benefit Trust (the "Trust")  
3715 Oaks Avenue  
Everett, WA 98213

Healthcare Management Administrators, Inc. ("HMA")  
220 120th Ave NE, Ste. D200  
Bellevue, WA 98005

**EFFECTIVE DATE:** January 1, 2011

When the Trust is acting as the Plan Sponsor under this Agreement, it will be referred to as the "Plan Sponsor," and when it is acting as the Administrator under this Agreement, it will be referred to as the "Plan Administrator."

### **Recitals:**

- A. The Plan Sponsor has established a self-insured Employee Welfare Benefit Plan, for the purpose of providing certain benefits to eligible employees of the Everett School District and their dependents (the "Plan");
- B. The Plan Administrator desires to retain HMA to furnish claims processing and other ministerial services with respect to the Plan; and
- C. HMA is willing to furnish such services, based upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Trust and HMA agree as follows:

### **Agreement:**

- 1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:
  - (a) "Effective Date" means the day and year set forth above, which shall be the date this Agreement becomes effective.
  - (b) "Participant" means an employee of the Everett School District, and the employee's dependents, who meet the eligibility requirements of the Plan, and satisfy all other conditions to participation in the Plan.

- (c) "Party" means each party to this Agreement, HMA and the Trust.

2. **Relationship of Parties.**

- (a) **Role of HMA Acting in Ministerial Capacity.** The Parties acknowledge and agree that HMA is acting solely in a ministerial capacity in performing its duties and obligations under this Agreement and shall have no discretionary authority or responsibility with respect to the administration of the Plan. HMA shall have no power to interpret ambiguities or conflicts that may exist in any provision of the Plan, but shall abide by the decisions of the Plan Administrator on all questions of substance and procedure respecting the Plan. HMA does not insure nor underwrite the liability of the Plan Sponsor under the Plan and shall have no financial risk or liability with respect to the provision of benefits under the Plan, except as set forth in Section 8.
- (b) **Plan Administrator.** The Trust, acting as the Plan Administrator, shall oversee the administration of the Plan and be responsible for complying with all reporting and disclosure requirements; shall have the exclusive right to interpret the terms of the Plan and to determine eligibility for coverage and benefits, which determination shall be conclusive and binding on all persons; and shall have authority, on final appeal, with respect to approval or disapproval of any disputed or doubtful claim.

HMA is not a fiduciary with respect to this engagement and shall not exercise any discretionary authority or control over the management or administration of the Plan, or the management or disposition of the Plan's assets. HMA shall limit its activities to carrying out ministerial acts of notifying Plan Participants and making benefit payments as required by the Plan. Any matters for which discretion is required, including, but not limited to, any such decisions on claims and appeals of denied claims, shall be referred by HMA to the Plan Administrator, and HMA shall take direction from the Plan Administrator in all such matters. HMA shall not be responsible for advising the Plan Administrator with respect to its responsibilities under the Plan nor for making any recommendations with respect to the investment of Plan assets. HMA may rely on all information provided to it by the Company, as well as the Plan's other vendors. HMA shall not be responsible for determining the existence of Plan assets. HMA agrees to comply with the claims procedures and other applicable policies of the Trust.

- (c) **Independent Contractor Relationship.** Notwithstanding anything express or implied in this Agreement to the contrary, the Parties acknowledge and agree that HMA is acting as an independent contractor, and for all purposes shall be deemed to be an independent contractor in performing its duties, and fulfilling its obligations, under this Agreement. Neither HMA, nor any individual performing services on its behalf, shall be considered or construed to be an employee of Plan Sponsor or of the Everett School District for any purpose whatsoever.

3. **Administrative Services Provided by HMA.**

- (a) **Administration and Claims Processing Services.** HMA shall provide the administrative and claims processing services set forth on Exhibit B, which is attached hereto and made a part hereof, during the term of this Agreement. The Parties agree to the Performance Guarantees set forth in Exhibit C, which is attached hereto and made a part hereof, during the term of this Agreement.
- (b) **Other Administrative Services Available.** HMA offers various other services, and performs various other ministerial functions, for plans in connection with the administration of employee health benefit plans. If the Plan Administrator subsequently requests additional services from HMA, and HMA agrees to provide such services, the Parties shall describe the mutually agreed upon services in an Addendum hereto, and include within such Addendum a mutually agreed upon fee schedule for such services.
- (c) **Business Associate Agreement.** The Parties agree to the Business Associate Agreement set forth in Exhibit E, which is attached hereto and made a part hereof.

4. **Fees to HMA.**

- (a) **Fees for Claims Processing Services.** As compensation for the administration and claims processing services set forth on Exhibit B, HMA shall be paid the fees set forth on Exhibit A, which is attached hereto and made a part hereof. Fees shall be based on the number of employees enrolled under the Plan on the first day of the month in which services are being billed, and shall be due and payable in advance on the first day of the month. Fees for any newly enrolled employees entering on or after the first day of the month shall be charged retroactively to the date of enrollment and shall be payable on the first day of the month following the date of enrollment. Any adjustments in fees for retroactive changes in enrollment will be made on the first billing cycle immediately following the submission of the change in writing to HMA.
- (b) **Fees for Other Administrative Services.** If the Plan Administrator requests any other administrative services from HMA hereunder, and HMA agrees to provide such services, the Plan Sponsor and HMA shall mutually agree upon a fee schedule for such services and the Plan Sponsor shall pay HMA in strict compliance with such fee schedule.
- (c) **Fees from Outside Vendors.** HMA shall be entitled to a portion of the fees charged by outside vendors, as set forth on Exhibit A.
- (d) **Fees for Negotiated Savings.** In the event that HMA is able to negotiate a reduced fee charged by a provider, HMA shall be entitled to retain a percent of the negotiated savings as stated in the fee schedule. In the event that additional saving negotiation services are needed, the Plan Sponsor and HMA shall mutually agree upon a fee schedule for such services. In the event that HMA is able to

negotiate additional savings with a Preferred Provider, fees for HMA's negotiation services will only apply to the additional savings retained.

- (e) **Fees for Repricing of Out-of-Network Claims.** HMA 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 Trust in the form of reduced claims costs.

There will be no cost to the Plan Sponsor for this service for claims that experience no repricing or negotiated savings.

- (f) **Reprocessing Fee.** In the event a retroactive amendment or the Plan Sponsor's failure to fund claims in a timely manner results in the need to reprocess claims, subject to prior approval, the Plan Sponsor agrees to pay HMA's expenses in performing that service.

- (g) **Right to Change Fees.** Upon approval of Plan Sponsor, HMA shall have a right to change any fees charged to the Plan Sponsor hereunder:

- (i) as of the first day of any Renewal Term;
- (ii) as of the effective date of any changes in applicable federal and state laws that would expand the scope of the services that HMA has agreed to provide hereunder;
- (iii) as of the effective date of any change in any law or regulation that results in increased costs to HMA concerning the services provided to Trust hereunder;
- (iv) as a result of a Plan amendment, in the event any amendment to the Plan changes the amount or type of processing, services or responsibilities undertaken by HMA, effective as of the effective date of the amendment.

If HMA elects to change any fees charged to the Plan Sponsor hereunder, HMA shall give 90 days prior written notice of such change to the Plan Sponsor and the Plan Sponsor may, if it does not want to retain HMA based on the new fee schedule, terminate this Agreement by sending written notice of termination to HMA.

## 5. **Funding of Benefit Payments.**

- (a) **Responsibility for Funding Benefits.** The Plan Sponsor shall retain the responsibility for funding all Plan benefit claims. The Plan Sponsor shall be responsible for:

- (i) All expenses incident to the Plan, including, without limitation, all premium taxes, or any other tax, including any penalties and interest payable with respect thereto, assessed against the Trust.
  - (ii) The consequence to any person not a Party to this Agreement resulting from any acts or omissions of Plan Sponsor occurring during the operation of this Agreement that are alleged to be a breach of fiduciary duty or a breach of duty or trust, or other contractual duty, regardless of the source of law serving as a basis for such allegation; and
  - (iii) Any amounts that HMA may become liable for which arise from any legal action or proceeding related to the recovery of benefits under the Plan or the administration of the Plan;
  - (iv) Reviewing any and all eligibility and benefit reports/documents furnished by the HMA to the Plan Sponsor and informing HMA of any errors contained therein within sixty (60) days of the Plan Sponsor's receipt of said claim report(s). Failure to so notify HMA shall constitute a waiver on the Plan Sponsor's part of any claim against HMA for failure to accurately pay the claim based on this information;
  - (v) Funding of benefits by the Plan Sponsor within ten (10) business days, commencing on the date written notification is sent by HMA, unless otherwise agreed upon in writing; and
  - (vi) In no event shall HMA have the responsibility to provide funding for the payment of benefits to Plan Participants, for payment of premiums for excess loss insurance or for expenses of the Plan.
- (b) **Designated Account.** The Plan Sponsor shall establish and at all times maintain, in strict compliance with all applicable federal and state laws, a central disbursement checking account (the "Designated Account"), and shall deposit in said Designated Account sufficient funds to pay:
- (i) all compensation and fees owing to HMA for services rendered hereunder;
  - (ii) all benefits owing to Participants in accordance with the terms of the Plan;
  - (iii) all premiums and fees owing by the Plan Sponsor to third parties for excess loss insurance, PPO arrangements and utilization review, to the extent that the Plan Sponsor desires to pay for such premiums and fees from the Designated Account; and
  - (iv) all other authorized costs and expenses incurred by HMA in performing its duties hereunder for which the Plan Sponsor has agreed to reimburse HMA under this Agreement.

Funds held in the Designated Account shall at all times be the property of the Plan Sponsor.

6. **Plan Sponsor Requirements.**

- (a) **Duty to Provide Data to HMA.** The Trust, as the Plan Sponsor and the Plan Administrator, acknowledges that the effective performance by HMA of the administrative services outlined herein will require that the Trust furnish various reports, information, and data to HMA. The Trust shall provide the following reports and information to HMA, together with such other data as HMA may from time to time request:
  - (i) Identification and verification of individuals eligible for benefits under the Plan, kinds of benefits to which such individuals are entitled, date of eligibility and such other information as may be necessary for processing of benefit payments;
  - (ii) Notification to HMA, on a monthly or more frequent basis, of all changes in participation whether by reason of termination, change in classification, new enrollment, or any other reason;
  - (iii) The number of employees and dependents covered under the Plan, collectively and separately classified by benefit coverage eligibility, enrollment, geographic area, age, sex, dependent coverage classifications, and in such other manner, as HMA shall require from time to time; and
  - (iv) The Social Security numbers for all employees and dependents covered under the Plan.
- (b) **Duty to Provide Materials.** The Trust, as the Plan Sponsor and the Plan Administrator, shall provide directly or through HMA, all materials, documents (including summaries for employees), reports, and notice forms, as may be necessary or convenient for the operation of the Plan, or to satisfy the requirements of governing law, as may be determined or prepared from time to time by HMA. Where distribution to employees is required, such materials shall be furnished in sufficient quantity and shall be appropriately distributed by the Plan Administrator.

7. **Term and Termination.**

- (a) **Initial Term.** The initial term of this Agreement shall be for a period of one year, commencing as of the Effective Date of this Agreement and terminating one year thereafter (the "Initial Term"), unless sooner terminated in accordance with the provisions of this Paragraph 7.
- (b) **Renewal.** Renewal of this Agreement shall be accomplished by attaching to this Agreement a revised Exhibit A, Schedule of Commissions and Administrative Fees, signed by the Parties to this Agreement and setting forth the term of such

renewal (the "Renewal Term"). In the event a revised Exhibit A is not signed by the Parties, but the Parties continue to perform under this Agreement, then it shall be deemed to be renewed for successive one (1) year periods until terminated.

- (c) **Termination by Either Party Without Cause.** This Agreement may be terminated by either the Trust or by HMA without cause by written notice of intention to terminate given to the other Party, to be effective as of a certain date set forth in the written notice, which shall not be less than ninety (90) days from the date of such notice.

Upon termination by either Party, within thirty days after the date of termination, HMA shall prepare and deliver a complete and final accounting and report as of the date of termination of the financial status of the Plan to the Plan Sponsor, together with all books and records in its possession and control pertaining to the administration of the Plan. All claim and appeal files, enrollment materials, and other papers necessary for claim payments under the Plan shall be available to the Plan Sponsor upon the date of termination of this Agreement. If requested, HMA will process run-out claims (claims incurred prior to the date of termination). The charge for run-out claim processing will equal 3 months of current administrative fees and the duration will be 12 months subject to provisions of Exhibit D attached hereto and incorporated by reference. At the time of the final accounting, HMA shall deliver any funds of the Plan in its possession or control to the Plan Sponsor on its order.

- (d) **Events Triggering Termination.** In the event of a breach of this Agreement, willful misconduct, gross negligence, or insolvency or other actions described in (d)(ii), by a Party to this Agreement ("First Party:"), the other Party ("Terminating Party") may terminate this Agreement in accordance with the following:

- (i) After notice to cure by the Terminating Party, the First Party fails to cure a breach of any provision of this Agreement, including but not limited to failure to pay fees or charges owing HMA, failure to consistently fund benefit payments in a timely manner, or failure to fund the Designated Account as specified in Section 5 above, within ten days of receipt of written notice given by the Terminating Party to the First Party specifying the nature of the breach with reasonable particularity; or
- (ii) The First Party becomes insolvent, is adjudicated as bankrupt, voluntarily files or permits the filing of a petition in bankruptcy, makes an assignment for the benefit of creditors, or seeks any similar relief under any bankruptcy laws or related statutes.

- (e) **Termination of Plan.** If the Plan is terminated, for whatever reason, this Agreement shall automatically terminate as of the effective date of such termination except as set forth in 7(c) if run-out processing is elected.

- (f) **Effect of Termination.** Upon termination of this Agreement, all obligations of the Parties, specifically including, without limitation, all obligations to process claims for benefits and disburse benefit payments, shall terminate, and all rights of the Parties, except the following, which shall survive any termination of this Agreement:
- (i) the right of HMA to receive and recover all fees then owing by the Plan Sponsor to HMA hereunder;
  - (ii) Sections 8 and 9 of this Agreement;
  - (iii) the Business Associate Agreement between the Parties.
8. **Indemnification by HMA.** HMA agrees to indemnify, defend and to hold the Trust and the Trustees of the Trust harmless from any claims, demands, liabilities, judgments, damages, expenses, and losses incurred by the Trust, including court costs and reasonable attorney's fees, to the extent such claims, demands, liabilities, judgments, damages, expenses, or losses arise out of, or are based upon, HMA's breach of this Agreement, its fraudulent, criminal or willful acts of misconduct, or its reckless or negligent acts or omissions in the performance of its duties under this Agreement. The provisions of this section shall survive termination of this Agreement.
9. **Indemnification by the Trust.** The Trust agrees to indemnify, defend and to hold HMA harmless from any claims, demands, liabilities, judgments, damages, expenses, and losses incurred by HMA, including court costs and reasonable attorney's fees, to the extent such claims, demands, liabilities, judgments, damages, expenses, and losses arise out of, or are based upon, the Trust's breach of this Agreement, its fraudulent, criminal or willful acts of misconduct or its reckless or negligent acts or omissions in the performance of its duties, as the Plan Sponsor or the Plan Administrator, under this Agreement. The provisions of this section shall survive termination of this Agreement.
10. **Exclusion from Indemnifications in Sections 8 and 9.** Neither Party shall be responsible to the other Party under Sections 8 or 9 for lost profits, exemplary, special, punitive or consequential damages nor be liable to the other Party for the same.
11. **Records Access and Audit Rights.** Subject to the provisions of this Paragraph 11, the Trust may audit HMA's compliance with its obligations under this Agreement and HMA shall supply the Trust with access to information acquired or maintained by HMA in performing services under this Agreement. HMA shall be required to supply only such information which is in its possession and which is reasonably necessary for the administration of the Plan, provided that such disclosure is not prohibited by law or by any third-party contracts to which HMA is a signatory. The Trust 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 Participant, the Trust has the legal authority to have access to such information. The Trust shall give HMA 60 days' prior written



notice of its intent to perform such an audit and its need for such information and shall represent to HMA that the information, which will be disclosed therein, is reasonably necessary for the administration of the Plan. All audits and information disclosure shall occur at a reasonable time and place and at the Trust's sole cost and expense.

Auditors will be compensated by the Trust at a fixed hourly or lump sum rate. The Trust agrees not to use contingent fee or recovery auditors.

HMA shall have no liability and will not be obligated to reimburse the Trust for alleged errors based upon the use of extrapolation methodologies for the purpose of inferring errors in a population of claim payments based upon the error rate in a sample drawn from that population.

Data subject to audit shall be limited to that processed during the current plan year and one year immediately preceding current plan year, not to exceed 24 months. In the event that more than 24 months have elapsed since HMA's processing of Trust's Group's claims, those claims shall not be subject to audit without the express written consent of HMA. To ensure that the audit will be limited to data processed in the prior 24 months, the Trust's auditor must provide its audit selection within 60 days of receiving the initial claims data from HMA.

A final draft of HMA-related issues contained in the audit report of the Trust's auditor ("Draft Report") shall be submitted to HMA for review within thirty (30) days following completion of audit procedures and at least fifteen (15) calendar days prior to the Draft Report being delivered to the Trust. During this fifteen (15) day period, HMA may review the Draft Report for disclosure of such proprietary, trade secret, or other confidential information which may be in violation of state or federal laws and/or the terms of this Agreement. If HMA determines that the Draft Report contains such information, the Trust's auditor will delete such information from the Draft Report prior to delivery of the final audit report. HMA may further review the Draft Report for inaccurate information or findings on HMA's claims administration or claims payments. HMA may notify the Trust's auditor of any disputed findings contained in the Draft Report and request that the report be corrected. If auditor agrees the information is incorrect, the Trust's auditor will correct the report. Otherwise, a statement from HMA indicating disagreement with certain findings will be included in the final audit report. The Trust agrees to provide HMA with a copy of all HMA-related issues as presented in the final audit report within two (2) days of delivery of the final audit report.

12. **Overpayment or Improper Payment of Plan Benefits.** If any payment is made hereunder to an ineligible person, or if it is determined that an overpayment or improper payment has been made to any Participant, HMA shall make reasonable efforts to recover the payment made to the ineligible person, or the overpayment or improper payment to the Participant, but shall not be required to initiate court proceedings for any such recovery. If HMA is unsuccessful, HMA shall promptly notify the Plan Administrator in order that the Plan Administrator may take such action as may be available to it.

13. **Additional Payments to Claimants.** The Plan Administrator may, by written notice to HMA signed by an officer of the Plan Administrator, instruct HMA to pay claims, which in HMA's opinion are not payable under the Plan, upon the condition that such instruction expressly releases HMA from any liability in connection therewith. The Plan Sponsor and the Plan Administrator hereby acknowledge that such payments may not qualify for credit toward excess or stop loss insurance coverage, if any, and may be considered "outside" the Plan, unless agreed upon, in writing by the Trust's stop-loss carrier. The Trust assumes all legal requirements for such payments. HMA agrees that in all dealings with the Trust's stop-loss or excess insurer, HMA shall not represent or act for such insurer.
14. **Cooperation in Defense of Claims.** HMA and the Trust shall advise each other as to matters which come to their respective attentions involving potential legal actions or regulatory enforcement activity which involve the Plan or are related to the activities of either Party with respect to the Plan or this Agreement and shall promptly advise each other of legal actions or administrative proceedings which have actually commenced.
15. **Notice of Third Party Administrator's Capacity.** HMA shall notify all Participants in writing of its identity and its relationship to the Plan and the Plan Sponsor in such form and manner as approved by the Plan Sponsor.
16. **Compliance with Laws.** The Trust, as the Plan Sponsor and the Plan Administrator, represents and warrants that the Plan intends to comply with all applicable federal, state and local laws and regulations applicable to the Plan, specifically including, without limitation, the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), and HIPAA, and covenants and agrees that it will, at its sole cost and expense, take all action necessary to cause the Plan's continued compliance with all applicable federal, state and local laws and regulations during the term of this Agreement. HMA represents and warrants that it will administer the Plan and will undertake all of its duties in compliance with all applicable federal, state and local laws and regulations. HMA represents and warrants that it has obtained, and will continue to maintain in good standing during the term of this Agreement, all licenses and certifications required by applicable law to provide the services contemplated by this Agreement.
17. **Miscellaneous.**
  - (a) **Entire Agreement.** This document is the entire, final and complete agreement and understanding of the parties regarding the subject matter hereof and supersedes and replaces all written and oral agreements and understandings heretofore made or existing by and between the parties or their representatives with respect thereto. This Agreement includes all Exhibits attached hereto.
  - (b) **Severability.** In the event any one or more of the terms, conditions or provisions contained in the Agreement or any application thereof shall be declared invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, the validity, legality or enforceability of the remaining terms, conditions or provisions of this Agreement and any other application thereof shall not in any way be

affected or impaired thereby, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions were not contained herein.

- (c) **Restriction on Assignment.** Neither Party shall assign or transfer any of its rights or delegate any of its duties or obligations hereunder, directly or indirectly, without the prior written consent of the other Party; provided, however, that either Party may, upon 60 days written notice to the other Party, assign this Agreement in its entirety to any person or entity, other than a direct competitor of the other Party, which acquires the business of the assigning Party or with which the Party merges or is consolidated or affiliated, provided that the permitted assignee agrees in writing to be bound by the terms of this Agreement. Any attempted assignment, transfer or delegation in violation of this Paragraph 17(c) shall be null and void.
- (d) **Notices.** All notices, requests, demands and other communications required or permitted to be given or made under the Agreement shall be in writing and shall be deemed delivered, if by personal delivery, on the date of personal delivery, if transmitted and confirmed by electronic mail or facsimile transmission, on the date of the transmission, if by U.S. certified or registered mail, postage prepaid, on the third business day following the date of deposit in the United States mail, or, if by nationally recognized overnight courier services, on the first business day following the date of delivery to such service, and shall be sent to the Trust or HMA, as the case may be, at the address shown on the first page of this Agreement, or to such other address, person or entity as either Party shall designate by notice to the other in accordance herewith.
- (e) **Binding Effect.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns.
- (f) **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties hereto, any right or remedy of any nature whatsoever, and nothing in this Agreement shall create, or be deemed to create, any rights, obligations or legal relationship between HMA and any Participant in the Plan.
- (g) **Fines and Penalties.** In the event that the Plan Sponsor or Plan Administrator fails to provide any of the data specified in Article 6 of this Agreement, **Plan Sponsor Requirements**, and said failure results in a fine or penalty, the full amount of the fine or penalty shall be passed through to the Plan Sponsor for payment.
- (h) **Force Majeure.** The parties will make their best effort to deliver services at the time specified herein. However, neither Party shall have an obligation or liability whatsoever arising out of, or in connection with, any delay or failure to perform any of its duties or obligations under this Agreement, or any loss or damage incurred as a result thereof, if such delay or failure is caused, in whole or in part,

either directly or indirectly, by act of God, fire, war, riot, civil insurrection, accident, embargo, governmental priority, failure of third parties to perform, criminal act (unless committed by someone in the employ of the offending Party), strikes or other labor dispute, decree or order of any court or government, or any other occurrence, act, cause or thing beyond the control of the parties, whether related or unrelated or similar or dissimilar to any of the foregoing, which prevents, hinders or makes fulfillment of this Agreement impractical, any of which shall, without liability, excuse either Party from performance of this Agreement.

- (i) **Authorization.** Each Party represents to the other Party that:
  - (i) the execution, delivery and performance of this Agreement has been duly authorized by all requisite action of the Party; and
  - (ii) this Agreement constitutes a valid and binding contract in accordance with its terms.
- (j) **Attorneys' Fees.** In the event of litigation with respect to this Agreement, the prevailing Party shall be entitled to recover reasonable costs and attorneys' fees incurred in connection with such litigation.
- (k) **Waiver.** No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.
- (l) **Amendment.** No supplement, modification or amendment of this Agreement shall be binding, unless the same is in writing and signed by duly authorized representatives of both parties.
- (m) **Dispute Resolution.** The Trust and HMA shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between representatives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within thirty (30) days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and the response shall include (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the representative who will represent that party and of any other person who will accompany the representative. Within sixty (60) days after delivery of the original notice, the representatives of both parties shall meet at a mutually convenient time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this provision are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the dispute

is not resolved by negotiation between executives, the parties shall endeavor to settle the dispute by mediation under the then current Center for Public Resources (CPR) or American Arbitration Association (AAA) Mediation Procedure. Unless otherwise agreed, the parties will select a mediator from CPR or AAA Panels of Mediators.

- (n) **Governing Law.** This Agreement shall be deemed to have been executed and entered into in Bellevue, Washington and shall be governed, construed, performed and enforced in accordance with the laws of the State of Washington, without regard to its conflict of law principles. The Parties to this Agreement expressly consent to the jurisdiction of King County, Washington and the U.S. District Court for the Western District of Washington.
- (o) **Headings.** The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.
- (p) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instruments.
- (q) **Systems Property of HMA.** To perform its duties hereunder, HMA shall use certain computer systems (including, but not limited to, software) and other systems and property. Such systems and property are proprietary and the exclusive and confidential property of HMA. The hiring of HMA to provide services under this Agreement gives neither the Trust nor the Plan any right to such systems, or to the inspection thereof. HMA reserves the right to change its systems and other technology at any time and from time to time, without notice or obligation to the Trust or the Plan. Confidential system property of HMA is not accessible to the Plan Sponsor or Plan Administrator except as provided in Section 11 of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the respective dates set forth below, effective as of the day and year first above written.

**Trust:**

Everett School Employees Benefit Trust

By: \_\_\_\_\_  
Name: Susan Lindsey  
Title: Chairperson  
Date: \_\_\_\_\_

**HMA:**

Healthcare Management Administrators, Inc.

By: \_\_\_\_\_  
Name: Clay Ellis  
Title: Sr. Vice President COO  
Date: \_\_\_\_\_

**EXHIBIT A PLAN SUPERVISOR AND AGENT/BROKER/CONSULTANT  
SCHEDULE OF COMMISSIONS AND FEES**  
**EXHIBIT B SERVICES PROVIDED BY HMA**  
**EXHIBIT C PERFORMANCE GUARANTEES**  
**EXHIBIT D HEALTHCARE MANAGEMENT ADMINISTRATORS PERFORMANCE  
GUARANTEES**  
**EXHIBIT E BUSINESS ASSOCIATE AGREEMENT**

**EXHIBIT A**  
**PLAN SUPERVISOR AND AGENT/BROKER/CONSULTANT**  
**SCHEDULE OF COMMISSIONS AND FEES**

**Administrative Fees:**

*(Some fees are split, with partial retention by HMA and disbursement to other vendors noted.)*

Effective 1/1/2011 to 12/31/2011 administrative fees shall be:\*

<u>\$ 16.20</u>	Per Employee Per Month for administration of Medical claims
	Per Employee Per Month for administration of Medical claims if all returned renewal paperwork is signed and returned to HMA by <input checked="" type="checkbox"/> December 7th check this box and the Medical Admin fee will be reduced to <u>\$16.00</u> outlined on the renewal quote.
<u>\$ .65</u>	Per Employee Per Month for administration of Vision claims
<u>\$ 3.20</u>	Per Employee Per Month for administration of the Medical Management Program
<u>\$ 5.50</u>	Per Employee Per Month for administration of the HMA Preferred Preferred Provider Network Program (\$1.50 retained by HMA, \$4.00 to Regence BlueShield)
<u>\$ 0.75</u>	Pharmacy Benefit Manager (Express Scripts) interface fee (\$0.75 retained by HMA)

If applicable, the administration of the Formulary Rebate program will be conducted by HMA on a quarterly basis. HMA does not retain any portion of any formulary rebate received. 100% of any formulary rebate received by HMA shall be passed on to the Company.

<u>N/C</u>	ID Card Production – Initial enrollment
<u>\$ 1.00</u>	ID Card Production – total re-carding – per employee fee
<u>30%</u>	Claims Negotiation, Hospital Bill Audit, and Repricing Services, as outlined in Section 4 (d) of the Agreement, and k(viii) of Exhibit B
<u>\$ 0</u>	Bank account reconciliation fees
<u>\$ 0</u>	Other bank fees
<u>N/C</u>	Summary Plan Description – Initial SPD production
	Summary Plan Description – Subsequent SPD production
<u>\$1,000</u>	First Document
<u>\$250</u>	Additional Document(s) (per document)
<u>\$125</u>	Amendment only
<u>\$500</u>	Amendment and incorporation into current Summary Plan
Description	

Cost + 20%

Coordination of SPD printing services.

Accept Decline

- |                                     |                                     |                     |  |
|-------------------------------------|-------------------------------------|---------------------|--|
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | \$ <u>1.50</u>      | Per Employee Per Month administration of COBRA                                       |
|                                     |                                     | (Medical/RX/Vision) |  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | \$ <u>0.65</u>      | Per Employee Per Month administration of HIPAA Certificates of                       |
|                                     |                                     | Creditable          | Coverage   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | \$ <u>2.00</u>      | Per Employee Per Month for administration of the "Managed Behavioral Health" Program |
|                                     |                                     |                     | Per Employee per Month for administration of EAP Programs                            |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | \$ <u>1.95</u>      | 4 session model  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | \$ <u>2.35</u>      | 4 session model  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | \$ <u>10.00</u>     | Per Claim Medicare repricing fee for Kidney Dialysis benefit                         |

**Commissions:**

Commissions Payable on Excess Loss Insurance Premium:

0%

HMA

0%

Broker

**Additional Information Concerning Our Fees:**

HMA, Inc. works with, and is appointed by, many excess loss carriers. Our administrative charges are unaffected by the carrier with whom you elect to purchase excess loss coverage. HMA also participates in excess loss carrier override programs with a few of the carriers. These programs provide professional benefit administrators, and brokers and consultants to trust health plans, with reimbursements for retention, volume, growth, profitability or other factors pursuant to agreements in force with that carrier relating to all or part of the business. This will vary from carrier to carrier, and will not affect the carrier choices made available to you. Additionally, any reimbursements retained by Healthcare Management Administrators, Inc. are used to cover expenses associated with administering the trust health plans with that carrier.

There is no way for HMA to project what reimbursements, if any, it will receive during 2011; however, they typically range from 0% to 6%.

We will be pleased to discuss with you further details of any contingent compensation agreements pertinent to your placement upon your request.

The aforementioned fees and commissions shall remain in effect beyond the above-stated term until 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.***

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the respective dates set forth below, effective as of the day and year first above written.

Mercer Human Resource Consulting

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Everett School Employees Benefit Trust

By: Susan Lindsey  
Name: Susan Lindsey  
Title: Chairperson  
Date: 12/2/2010

Healthcare Management Administrators, Inc.

By: \_\_\_\_\_  
Name: Clay Ellis  
Title: Sr. Vice President, COO  
Date: \_\_\_\_\_

**EXHIBIT B**  
**SERVICES PROVIDED BY HMA**

1. HMA, within the scope of its duties under this Agreement, shall provide services for and shall assist the Plan Administrator in the administration of the Plan pursuant to the terms and conditions of the Plan as requested and authorized from time to time. Upon request, HMA shall prepare a summary description of the Plan ("SPD") setting forth the benefits and rights of the Plan Participants. This SPD shall be delivered to the Trust for review by November 1 of the year prior to the effective date of the SPD. Final review and approval of the SPD will be the responsibility of the Plan Sponsor. HMA understands and agrees that the Plan is not subject to ERISA and that any SPD HMA produces will not make references to ERISA and regulations and rules which are not applicable to governmental plans. An additional fee will be charged for the production of an SPD coinciding with the renewal of the Plan.
2. Prepare and assist the Plan Administrator in distributing benefit booklets to the Plan Participants. Initial booklet supply is not included as a part of the Plan set-up fee. Subsequent supplies are also at the Plan Sponsor's cost.
3. Assist the Plan Administrator in communicating to Participants any and all subsequent changes to the Plan.
4. Subject to the provisions of Section 2 of this Agreement, HMA agrees to provide the following claims processing and payment services, including, but not limited to:
  - (a) Answer all telephone inquiries from employees of the Everett School District regarding eligibility and coverage under the Plan, and respond to requests for forms and status inquiries on filed claims and benefit payments. HMA will provide adequate customer service representatives between the hours of 7:00 a.m. to 5:00 p.m. PST, Monday thru Friday, during non-holiday work days.
  - (b) Receive and process claims for payment of covered benefits for Plan Participants in accordance with the provisions of the Plan, for claims incurred on and after the Effective Date of this Agreement.
  - (c) Communicate with Plan Participants and health care providers as necessary to obtain any additional information deemed necessary to expedite the processing of claims for benefits under the Plan.
  - (d) Consult with the Plan Administrator, as necessary, concerning interpretations with respect to the provisions of the Plan and all questions of substance and procedure relating thereto.
  - (e) Issue and distribute claims checks to Participants, from funds provided by the Plan Sponsor, and provide appropriate Explanation of Benefit forms ("EOB's") to Plan Participants and health care providers, as applicable, in connection therewith.

- (f) Based on the summary plan description and other information provided by the Plan Sponsor, make initial determination on all claims for benefits and all issues relating to claims, enrollment, or eligibility. Provide written notice to a Plan Participant of any denial of a claim, benefit, enrollment, or eligibility issue, in whole or in part, which includes the specific reason(s) for such denial and the opportunity for review of the denial. If the Participant appeals the initial determination, HMA agrees to manage the review of such determination using the summary plan description and other information provided by the Plan Sponsor and inform the Participant of the decision on appeal.
- (g) Provide the Plan Sponsor forms for use by Plan Participants in submitting claims and appeals to HMA.
- (h) Provide for the coordination of benefits, subrogation collection activities, and collection of overpayments or improper payments made to any Participants, as reasonably possible. In the event that additional recovery services are needed, HMA, subject to the approval of the Plan Sponsor, shall arrange for the purchase of such recovery services. Any fees charged to HMA for recovery services will be passed on to the Company for payment.
- (i) Screen claims to avoid duplicate payments and maintain procedures that will assure consistency in claims payments and decisions on appeal in accordance with the Plan.
- (j) Prepare such reports concerning Plan Participants' benefits as the Plan Sponsor, the Plan Administrator and HMA may hereafter agree upon.
- (k) If a fee is stated and accepted on Exhibit A thereto, provide the following:
  - (i) **"COBRA administration,"** HMA will 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, HMA will update the Plan Sponsors COBRA records;
  - (ii) **"HIPAA pre-existing conditions compliance administration,"** HMA will reprogram the system to administer and document compliance activity and accommodate changes in pre-existing condition periods; receive incoming Certificates of Creditable Coverage; calculate the preexisting condition period, in days, based upon creditable coverage; communicate balance, in days, of any remaining pre-existing condition period to new Plan Participants; mail the "Notice to Individual of Period of Preexisting Condition Exclusion;" report compliance activity to clients, excess loss carriers, or appropriate HIPAA federal regulatory authorities upon request;

and assist in the investigation and determination by the Plan Administrator of disputed calculation of pre-existing period;

- (iii) **"HIPAA certificates of creditable coverage administration,"** HMA will mail certificates to the last recorded address of a Plan Participant within 14 days of notification of termination from the Plan, or, upon request by a Participant, during the Participant's participation in the Plan and for up to 24 months after termination of such participation;
- (iv) **"Administration of the Utilization Management Program,"** HMA will provide pre-authorization services in compliance with the Plan, screen claims for medical necessity and assist in making pre-existing condition determinations;
- (v) **"Administration of Large Case Management,"** HMA will screen catastrophic and potentially high-dollar claims, assign length of stay and monitor admissions, promote appropriate patient care and optimize benefits usage;
- (vi) **"Administration of the Live Well Program,"** HMA will provide access to a comprehensive health and lifestyle management program. Live Well components include: (1) disease management: an education and support program that will identify (via predictive modeling, health risk questionnaire and referrals) and reach out to those with chronic conditions, (2) a 24-hour nurse advice line in which participants have access to a health information library and the ability to speak to a nurse for counseling or advice, (3) an online e-health portal for participants to obtain wellness and prevent information and take a health risk questionnaire (HRQ), a lifestyle coaching program that will outreach to all adult members that take the HRQ to assist them in improving their health & lifestyle behaviors such as smoking, diet & exercise, and workplace biometric screening of key numbers such as blood pressure, cholesterol, body mass index and blood glucose.
- (vii) **"Administration of the Live Well Maternity Program,"** HMA will provide risk assessment, education and ongoing monitoring for mothers-to-be in effort of improving the outcomes and reduce costs associated with complicated pregnancies and premature births.
- (viii) **"Administration of EAP Programs and Services"** HMA will provide access to a comprehensive Employee Assistance Program suite of services, including a four or six session counseling benefit, identity theft services, crisis response, a variety of worksite services, legal and financial referral services, and will preparation services.
- (ix) **"Administration of Managed Behavior Health Program"** HMA will provide access to managed behavioral health services. Services include

pre-authorization, concurrent and retrospective review of inpatient and residential care for mental health and chemical dependency. Additionally, managed behavioral health includes case management for mental health and chemical dependency cases and appeals review. Managed Behavioral Health may be integrated with EAP counseling services.

- (x) **“Claims Negotiation, Hospital Bill Audit, and Repricing Services”**  
HMA will conduct a Hospital Bill Audit on all In Network hospital bills that meet HMA’s threshold for review. Each In Network Hospital bill selected for audit will be carefully scrutinized to eliminate duplicate and/or non-allowable charges.

HMA will provide access to repricing services for Out of Network claims, as well as fee reduction negotiation services for Out of Network claims that cannot be repriced. HMA’s Medical Management Department will conduct a Hospital Bill Audit on all Out of Network hospital bills that meet HMA’s threshold for review. 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 in the event that repricing is not available, engage in fee reduction negotiations. In those cases where no savings can be obtained by repricing or negotiation, the claim will be paid at the plan’s normal Out of Network benefit level according to the plan provisions. There will be no cost for the provision and coordination of this service for claims that experience no repricing or negotiated savings

5. HMA shall coordinate approval of claims under the Plan and arrange for the payment thereof from funds available to the Plan either by issuing a check or draft upon the Plan bank account, if such account is provided for this purpose, or by written order and authorization delivered to the Plan Administrator or other person authorized to issue such check or draft in payment of claims. HMA shall honor any assignment of benefits of a person eligible for benefits under Plan to any person or institution, which is a proper and qualified assignee under the terms of the Plan.
6. HMA shall pay from the Plan bank account, if provided, or shall issue an order to the Plan Administrator or other person with authority to disburse funds of the Plan to pay, all of the expenses of operation of the Plan incurred pursuant to the performance of this Agreement (excluding Plan administration fees unless specifically authorized).
7. HMA, subject to the express direction by, and approval of, the Plan Sponsor, shall arrange for the purchase of policies of insurance to provide any of the benefits provided for in this Agreement, the Plan, or the Trust (if any). The Plan Sponsor shall pay all premiums for policies of stop-loss or individual and aggregate excess risk or similar type of insurance.
8. HMA shall not be required to assist the Plan Sponsor or the Plan 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 Plan. If necessary, professional fees for preparing government required forms and/or auditing of the Plan shall be the responsibility of the Plan Sponsor.

9. HMA shall render monthly reports to the Plan Sponsor which shall include the following:
  - (a) Receipts of the Plan other than deposits made by the Plan Sponsor from its own funds or from collections from employees;
  - (b) Disbursements, by category, made from the Plan;
  - (c) A statement of the fees due HMA.
10. HMA shall maintain and pay the cost of a fidelity bond in the amount of not less than One Hundred Thousand Dollars (\$100,000.00) and an errors and omissions insurance policy in the amount of not less than One Million Dollars (\$1,000,000.00) covering HMA and any of its agents or employees who may collect, disburse, or otherwise handle disbursements or payments on behalf of the Plan.
11. HMA shall maintain all records relating to the investigation, processing, and payment of all claims for benefits and appeals thereof for a period of not less than eight (8) years from the date of the claim for benefits. Upon termination of this Agreement, these records may be transferred to the Plan Sponsor or other person or entity, at the Plan Sponsor's request.
12. The Plan Sponsor, the Plan Administrator or their agents or representatives may examine any records maintained by HMA regarding claims for benefit payments, benefits paid and the issuing of checks for payment of benefits under the Plan.
13. HMA shall maintain books of account and supporting documents according to generally accepted accounting principles as promulgated by the Financial Accounting Standards Board. HMA agrees that the Plan Sponsor, the Plan Administrator or their agents or representatives may inspect and audit its claims records relevant to the Plan at any time upon giving to HMA sixty (60) days' prior written notice of its desire to do so. Audits may be conducted by the Plan Sponsor's or Plan Administrator's audit staff or by an independent contractor employed at the Plan Sponsor's expense, which may be either a certified public accountant or otherwise professional qualified to perform such auditing services.

**EXHIBIT C**  
**HEALTHCARE MANAGEMENT ADMINISTRATORS**  
**PERFORMANCE GUARANTEES**

These specifications are to apply beginning with the Effective Date of the Agreement between parties to which this Exhibit is attached, and shall continue in force and effect until the Agreement is terminated or this exhibit is superseded in whole or in part by a later executed Exhibit.

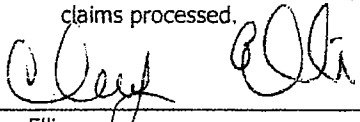
PERFORMANCE GOALS	STANDARD	PENALTIES
Claim Payment/ Procedural Accuracy	97%	2%
Average Claim Handling Turnaround	90% of all claims in 14 calendar days	1%
Monthly Financial Summary	Mailed to the client by the 15 <sup>th</sup> working day following the end of the month.	1%
Customer Service Average Speed of Answer	45 seconds or less to answer a phone call	1%
Financial Accuracy	98%	1%

**Penalties**


- ❖ For each category that falls below the "standard" range, the above penalties will be applied to HMA's base administrative fee.
- ❖ Calculations are to be done quarterly, settlements annually.
- ❖ Penalties are only paid for the quarter goals were not meet.

**Definitions:**

- ❖ Claim handling is defined as a claim paid, pending, or denied.
- ❖ Statistics will be measured based upon the ESEBT line of business.
- ❖ Any confirmation audits will use Healthcare Management Administrators audit criteria for verifying results. Audits are performed based on a random 2% sample of all ESEBT claims processed.

  
\_\_\_\_\_  
Clay Ellis  
Senior Vice President, COO  
Healthcare Management Administrators

6-12-07  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature and Title  
Executive Director of HR/Finance  
\_\_\_\_\_  
Date  
May 24, 2007

HMA, Inc. TPA Agreement

01/07

## **EXHIBIT D**

### **RUN-OUT ADMINISTRATION**

In accordance with the terms and provisions of section 7(c) of the Administrative Services Agreement and in conjunction with a duly executed Termination Agreement, this Exhibit D to the Administrative Services Agreement between the Trust and HMA authorizes HMA to continue processing health care claims, incurred prior to the termination date of the Administrative Services Agreement for a period of twelve (12) months. The Run-Out Administration Fee is based on three (3) times the monthly administrative cost billed by HMA during the last month of the current contract and paid at 100% for the first month, 90% for the second month, and 80% for the third month. Run-Out claims administration will not begin and the Termination Report Package will not be delivered until all fees are received by HMA.

The following report package will be available for a fee of \$250. If additional custom reports are required there will be an additional cost of \$250 per report payable to HMA prior to the preparation and mailing of such reports.

The Termination Report Package includes:

- Year-to-Date Deductible Report
- Out-of-Pocket Maximum Report
- Lifetime & Calendar Benefit Maximums Report
- Detail Paid Claims Report
- Census



## Exhibit E – Business Associate Agreement

**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 than 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 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 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

*Randi Seaberg*  
\_\_\_\_\_  
Signature

*RANDI SEABERG*  
\_\_\_\_\_  
Name

*Director Human Resources*  
\_\_\_\_\_  
Title

*July 9, 2010*  
\_\_\_\_\_  
Date

HMA

*Clay Ellis*  
\_\_\_\_\_  
Signature

*Clay Ellis*  
\_\_\_\_\_  
Name

*Sr. Vice President/COO*  
\_\_\_\_\_  
Title

*7-23-16*  
\_\_\_\_\_  
Date