



Mr. Jay Easterling  
Office of Contracts and Acquisitions  
Ohio Department of Job and Family Services  
30 E. Broad Street, 31<sup>st</sup> Floor  
Columbus, OH 43215

**AETNA BETTER HEALTH<sup>®</sup> OF OHIO**

August 10, 2012

*Via Email to [jay.easterling@jfs.ohio.gov](mailto:jay.easterling@jfs.ohio.gov) and hand delivery*

Dear Mr. Easterling:

In response to your letter dated August 8, 2012, I write this letter on behalf of Aetna Better Health of Ohio (Aetna) to provide the information and documents you requested.

Aetna understands that CareSource filed a protest against Aetna claiming that Aetna should not be given credit for information Aetna reported related to the Mercy Care Plan in Arizona and the Maryland Physicians Care Plan. As Aetna's RFA response states, the experience Aetna reported reflects the experience of Aetna and its corporate family members. Specifically, in connection with Appendices B through F, the information reported by Aetna concerning the Mercy Care and Maryland Physician Care plans reflects the experience of Schaller Anderson, LLC, which is listed on Aetna's Corporate Family and Relationship Organizational Chart as the corporate family member which administers the Mercy Care and the Maryland Physicians Care plans pursuant to plan management services agreements. In these two states, Schaller Anderson, LLC manages and administers all of the services and operations of these plans in a turnkey fashion. The allegations asserted by CareSource are unfounded because the experience being reported is that of Schaller Anderson, LLC, which is an Aetna corporate family member.

Notwithstanding that Aetna has already provided to ODJFS and its attorneys the written instruments documenting the relationship between Schaller Anderson, LLC and both Mercy Care and Maryland Physicians Care plans, we are providing them again herewith.

Aetna looks forward to working with ODJFS to serve the healthcare needs of Ohioans.

Sincerely,

A handwritten signature in black ink that reads "Jason Smith". The signature is written in a cursive, flowing style.

Jason Smith  
Senior Business Development Executive

MCO MANAGEMENT SERVICES AGREEMENT

DATED: September ~~16<sup>th</sup>~~, 1996 (the "Effective Date")

PARTIES: MARYLAND CARE, INC., a Delaware corporation ("MCO"); and  
SCHALLER ANDERSON OF MARYLAND, L.L.C., a Maryland limited liability  
company ("SAM").

RECITALS:

A. MCO is a managed care organization which has been formed to serve persons eligible for the Maryland Medicaid Reform Program under a Section 1115 waiver submitted to the Health Care Financing Administration.

B. MCO desires SAM to provide Management Services (as defined below) and Related Services (as defined below) for MCO.

C. SAM is willing to provide Management Services and Related Services for MCO, on the terms and subject to the conditions set forth in this Agreement.

ACCORDINGLY, the parties agree as follows:

ARTICLE 1

ENGAGEMENT; RETENTION OF AUTHORITY BY MCO

1.1 Engagement. MCO engages SAM to perform the functions and to provide the services described in this Agreement, and SAM accepts the engagement, on the terms and subject to the conditions set forth in this Agreement. Under the terms of MCO's Articles of Incorporation, authority for administration of this Agreement is vested in MCO's Board of Directors (the "Board"). MCO hereby delegates to SAM the general authority to manage MCO, including performing the services delineated in the Appendix (the "Management Services"). SAM will also direct, prepare and submit to the Board for its approval, any responses which MCO may be required to make to requests for applications issued by the State of Maryland, including the Draft Guidelines for MCO Applications previously issued by the State of Maryland (the "Related Services"). Related Services include production of application documents for the initial contract to be entered into between MCO and the State of Maryland for the provision of capitated medical services to Maryland's Medicaid populations (the "Maryland Contract") and assisting in the negotiation of the Maryland Contract, assessment of equity partners and evaluation of alternative governance structures, attending MCO-related meetings and providing consulting and assessment services required to develop and implement MCO.

1.2 Control by MCO. MCO shall at all times, through the Board, exercise ultimate control over and authority for the policies and operations of MCO. The Board may, but shall not be obligated to, adopt as MCO policy the recommendations and/or proposals made by SAM.

1.3 Directives to SAM; Reliance by SAM. SAM shall perform the functions and services set forth in this Agreement, in accordance with the policies and directives of the Board provided to SAM from time to time. MCO, through the Board, shall communicate all of its policies and directives to SAM, and SAM shall be subject to and responsible for any written policy or directive. SAM shall follow, and shall be entitled to rely on and assume the validity of all communications from the Board, the Chairman of the Board, or a designee of the Board. SAM may rely on the recommendations of committees of the Board and MCO members' medical staffs and their designated committees and departmental chairmen (collectively, the "Medical Staff") about the quality of professional services provided by individuals with clinical privileges at MCO member hospitals. SAM may also rely on the recommendations of MCO and its designated committees about the quality of professional services provided by its shareholder/member organizations and their physicians. Notwithstanding the preceding two sentences, nothing herein shall be construed as relieving SAM from responsibility for the credentialing function as well as other functions under the management responsibility of SAM, all of which management responsibility shall be subject to oversight by the Board.

1.4 Independent Contractor. SAM shall serve as an independent contractor in performing its functions and providing services pursuant to this Agreement. MCO and SAM are not and will not be deemed to be partners, joint venturers, co-venturers, or principal and agent, and neither party shall be liable either primarily or as guarantor for debts or other obligations of the other party, other than items (such as Start-Up Equipment Budget and Start-Up Marketing Budget items) which expressly require reimbursement pursuant to this Agreement.

## ARTICLE 2

### DUTIES OF SAM

2.1 General Duties. SAM shall perform the Management Services and Related Services described in this Agreement including managing MCO. In performing its obligations under this Agreement, SAM shall act at all times in a professional manner, devoting such efforts as SAM deems appropriate in good faith and with reasonable diligence to the performance of this Agreement. SAM shall assign such personnel to the overall management and overall direction of MCO pursuant to this Agreement as it deems appropriate, including general oversight and participation of J.P. Anderson, A.L. Pelberg, M.D., and T.J. Hyland, or other personnel reasonably acceptable to MCO, as long as they are employed by SAM or an affiliate. In managing MCO, SAM shall implement the Board's policies and directives and use its best efforts to cause MCO to arrange for quality health care, subject to constraints imposed by the limitations of financial resources available to MCO, competition, the acts and omissions of the State of Maryland, applicable laws, and other relevant factors. SAM shall serve as the primary liaison for MCO with

the State of Maryland. In addition to providing the SAM Employees (as defined in Section 2.2a., below), SAM shall arrange for all other necessary MCO administrative services, including its administrative services subcontractors; provided, however, that SAM shall remain fully responsible for any such administrative services subcontractor's performance or failure to perform any and all duties of SAM under this Agreement. All such administrative services subcontractors shall be paid by SAM unless such services are retained solely by MCO. Nothing in this section shall be construed as to limit MCO's obligation for payments stipulated in Sections 6 and 7.

## 2.2 Specific Duties.

a. SAM Employees. SAM shall provide MCO with the services of the personnel for the management of MCO specified below, all of whom shall be employees of SAM (the "SAM Employees"): A chief executive officer (CEO) of MCO, a chief medical officer (CMO) of MCO, and a chief financial officer (CFO) of MCO, and such other personnel as SAM deems necessary or appropriate to provide the Management Services. All SAM Employees shall be and remain employees of SAM and not employees or independent contractors of MCO throughout the term of this Agreement. SAM shall determine the amount and nature of and shall pay compensation to the SAM Employees for all services rendered by them in connection with this Agreement. SAM shall have the full responsibility for all wages, social security, worker's compensation, unemployment insurance and other benefits, which may, but shall not be required to, include vacation pay, sick leave, retirement benefits, disability insurance and other employee benefits, (collectively, "Pay and Benefits") for all personnel which it employs pursuant to this Agreement, and shall indemnify and hold MCO harmless against and from any liability or expense (including reasonable attorneys' fees) incurred by MCO in connection with the payment or provision, or failure to pay or provide, any such Pay and Benefits. The Board shall have input to SAM's selection of MCO's CEO, CFO and CMO, and their appointment shall be subject to the Board's approval, which shall not be unreasonably withheld. If the Board reasonably determines that a CFO, CEO or CMO of MCO (a "Senior Employee") is not adequately performing his or her duties and responsibilities to MCO, the Board shall so inform SAM, and SAM shall thereafter take such corrective action as may be appropriate under the circumstances, including, if so requested by the Board following a reasonable period for SAM's taking of such corrective action, the replacement of such Senior Employee. If the Board reasonably requests replacement of a Senior Employee, SAM shall commence recruitment efforts to replace the Senior Employee, and upon successful recruitment of a replacement Senior Employee, which replacement Senior Employee shall be subject to the Board's approval, SAM shall replace the Senior Employee with the replacement employee.

b. Budgets. During the term of this Agreement, SAM shall submit to the Board for approval, disapproval, or modification by the Board, an annual MCO operating budget, including capital and marketing expenditures (if appropriate) (the "Budget"), designed to meet applicable law and regulations and the goals and objectives of the Board. SAM shall submit to the Board, for approval, disapproval or modification by the Board, from time to time during the fiscal year, proposed revisions to the Budget to reflect material changes in the Budget during the fiscal year.

Upon request, SAM will provide MCO with any additional financial information reasonably required to report MCO activity.

c. Accounting and Reports. SAM shall establish and administer accounting procedures and controls for MCO in accordance with applicable procedures and directives, and in accordance with generally accepted accounting principles. SAM shall prepare materials required in connection with third party reimbursement or payment contracts or programs in which MCO participates. SAM shall submit to the Board monthly and annual balance sheets, monthly and year-to-date expenditure and revenue reports as compared to Budget and for the same period in the prior year for MCO, and monthly reports summarizing SAM's management activities. Annual financial statements shall be provided to MCO as soon as practical but in no event later than 120 days following the close of each fiscal year. For the purpose of this contract, the term "fiscal year" shall mean the twelve (12) month period beginning each January 1. The operations of MCO shall be audited annually by an independent certified public accounting firm recommended by SAM and approved by the Board. SAM shall pay the reasonable cost of such audit. SAM will make available to the auditors all documents and records reasonably requested in connection with any external or internal audit of MCO.

d. Payments of Claims and Accounts Payable, Sub-Capitated Expenses and Other Liabilities. SAM shall exercise reasonable care in applying MCO's funds to the timely payment of its claims and accounts payable, sub-capitated expenses, and other liabilities and obligations, and shall apply such funds in accordance with the Board's directives. SAM's obligations under this paragraph, however, are subject to the availability of MCO funds to make such payments. SAM will not be obligated to make any payments from its own funds or resources or to advance any monies to MCO.

e. Purchase and Lease of Equipment and Supplies.

(1) MCO will reimburse SAM for a start-up equipment budget (the "Start-Up Equipment Budget") in an amount not to exceed [REDACTED] without Board approval. The Start-Up Equipment Budget will be prepared by SAM, delivered by SAM to the Board, and subject to the Board's approval, which shall not be unreasonably withheld. The Start-Up Equipment Budget will include, but not be limited to, personal computers, other information systems equipment, work stations, telephone system and equipment, information systems modifications, tenant improvements, copiers and other equipment to be used in providing services pursuant to this Agreement. The parties anticipate that some of the items to be acquired under the Start-Up Equipment Budget will be purchased; all items purchased shall be the property of SAM, together with all additions thereto and replacements thereof; provided, however, that if this Agreement is terminated prior to the Start-Date (as defined in Section 6.1 below) pursuant to Section 7.2.a. below, all items purchased shall be the property of MCO. The parties also anticipate that some of the items to be acquired under the Start-Up Equipment Budget will be leased. MCO shall be responsible for and shall pay directly to the lessors all lease payments and other charges for those items. All leased items will be the property of the equipment lessors during the terms of the leases,

all of which shall expire at or prior to three years following the date of this Agreement. Upon the expiration of the leases, MCO will pay the purchase price for the leased items, and all such items will be the property of SAM. If this Agreement is terminated prior to the expiration of a particular lease term, MCO shall pay all termination charges under the leases, together with all purchase prices for the items, and all of the items shall be the property of SAM; provided, however, that if this Agreement is terminated prior to the Start-Date, MCO shall be entitled to make such arrangements as it deems appropriate with respect to such items, including returning such items to the lessors thereof, and any items not returned to the lessors shall be the property of MCO. MCO, with the agreement of SAM, may elect to contribute materials and/or equipment to SAM that in SAM's estimation are equivalent or comparable to the items designated in the Start-Up Equipment Budget in lieu of equipment expenditures funding. Items (including Information System modifications) listed on the approved Start-Up Equipment Budget and not directly provided by MCO, may be purchased by SAM, and will be paid for by MCO or the payment therefor reimbursed by MCO without further authorization by the Board within 30 days of receiving an invoice from SAM.

(2) Beyond the Start-Up Equipment Budget, SAM shall manage all purchases and leases of equipment, and all materials and services which SAM deems necessary or proper in the operation of MCO. All such equipment and materials shall be purchased or leased at SAM's expense, or, in the case of certain electronic membership eligibility verification, electronic claims processing, electronic referral and other information systems-related expenses, at the expense of the providers to MCO, and all such equipment and materials shall be the property of SAM.

(3) MCO shall abide by all purchase or lease terms for items included in the Start-Up Equipment Budget and Start-Up Marketing Budget and any subsequent Budget.

(4) Notwithstanding the agreement of SAM and MCO that the Start-Up Equipment Budget will not exceed [REDACTED] the parties acknowledge that that amount is as a result of SAM's good faith estimates of MCO's start-up needs as of the date of this Agreement. If the actual cost of system modifications and other start-up acquisitions vary from SAM's current estimates of the costs, SAM and MCO agree to negotiate in good faith to correspondingly increase or decrease the Start-Up Equipment Budget to reflect the increase or decrease in the costs, all of which costs shall be borne solely by MCO, and all of which cost savings shall inure solely to the benefit of MCO.

f. Quality Assessment and Improvement. SAM shall recommend to the Board quality assessment and improvement programs designed to meet standards required by appropriate certification agencies and the policies and procedures of MCO. SAM shall lead the implementation of the quality assessment and improvement programs approved by the Board, shall provide overall management direction of the programs, and shall assure the reporting of the results of the programs to the Board on terms to be specified in the quality assessment and improvement plan to be adopted by the Board.

g. Management Plan and Report.

(1) Development of Management Plan; Board Approval. Upon execution of this Agreement, SAM shall submit to the Board for its review and approval an initial implementation plan for the period ending December 31, 1996. An annual management plan (each, a "Management Plan") will be submitted by SAM on or before December 1 of each year of this Agreement, commencing with the Management Plan to be in effect from January 1, 1997 through December 31, 1997. SAM will submit to the Board oral and/or written information about the development of the Management Plan to assist the Board in making an informed decision regarding approval or disapproval of the Management Plan.

(2) Reports by SAM. On or before March 1 of each year, commencing in 1998, SAM shall deliver to the Board a written report on the completion of the goals and objectives set forth in the Management Plan approved by the Board for the previous fiscal year. SAM shall also deliver to the Board such additional oral or written reports as the Board may reasonably request from time to time.

h. MCO Reports. SAM shall timely file all MCO reports required by applicable law to be filed with third parties, and cause such reports and the information and data therein contained to have been properly and accurately compiled and completed, unless SAM is unable to do so due to the actions of MCO or third parties or due to the failure of MCO or third parties to provide information or data necessary to file such MCO reports.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS  
OF MCO

MCO makes the following representations and warranties to and covenants with SAM. MCO acknowledges that SAM is entering into this Agreement with MCO in material reliance on the accuracy of the following representations, warranties and covenants.

3.1 Authority; Enforceability. MCO has full power and authority to enter into and perform this Agreement, and the individual signing this Agreement on behalf of MCO has actual authority to do so. This Agreement has been duly authorized, executed, and delivered by MCO and represents the legal, valid, and binding agreement of MCO, enforceable against MCO in accordance with its terms. Upon execution of this Agreement, MCO shall advise SAM in writing of the members of the Board, its Chairman, and any designees with authority to direct SAM as contemplated by Section 1.3 of this Agreement. SAM may rely on such notice until it is revised by a subsequent written notice.

3.2 No Conflicts. The execution, delivery, and performance of this Agreement by MCO does not require the consent, waiver, approval, license, or authorization of any person or public authority which has not been obtained and evidence of which delivered to SAM prior to the date of this Agreement, except for the Section 1115 waiver applied for from HCFA.

3.3 Reimbursements. MCO and its shareholders/member organizations shall not do or omit to do anything to jeopardize Medicare, Medicaid, or other third-party reimbursement arrangements of the MCO.

3.4 Insurance. MCO will obtain and pay for, for the duration of this Agreement, insurance of such type and with such limits which may be required of MCO by the State of Maryland from time to time, which insurance shall name SAM as an additional named insured, and shall contain a waiver of subrogation by MCO and the insurers against SAM except for the intentional misconduct of SAM. Such insurance will include but not be limited to professional liability insurance, directors and officers liability and errors and omissions insurance. A certificate of insurance will be delivered to SAM within 10 days of the signing of this Agreement, and thereafter not less than thirty (30) days prior to the expiration of any prior certificate, each such certificate to provide that the insurance to which it pertains will not be canceled or not renewed without at least thirty (30) days' prior written notice to SAM.

If facilities or equipment as described in Section 2.2(e) is provided by MCO shareholders/member organizations, MCO agrees, and any other shareholder/member organization providing the facilities or equipment, will, as a condition to providing such facilities or equipment, agree to be responsible for risk of loss to such facilities, contents, and equipment and agrees to waive subrogation against SAM and cause its insurers to waive subrogation except for the intentional misconduct of SAM.

If any of the insurance provided pursuant to this Section 3.4 is on a "claims made" basis, upon termination of this Agreement, or if an insured party changes insurance carriers during the term of this Agreement, the insured party shall maintain or obtain prior acts coverage or purchase optional extension period (known as "tail") coverage to insure that coverage in the required amounts is maintained for claims made at any time related to an occurrence during the term of this Agreement.

3.5 Performance Bond and Capitalization. To the extent that the rules established from time to time by State of Maryland require there to be performance bonds or other capitalization provided by or with respect to the MCO, MCO shall procure and provide the same at its sole expense.

3.6 Covenant Not to Hire. MCO and, as a condition of their ownership of or membership in MCO, MCO's current shareholders/member organizations have agreed and its future shareholders/member organizations will agree not to, and will not permit any of their affiliates to, employ, offer to employ, or induce or facilitate the acceptance of employment by SAM employees serving as the MCO CEO, CMO or CFO themselves or by any other party until one year following

the termination or expiration of this Agreement unless (a) SAM gives its written consent thereto, which consent may be withheld by SAM in its sole and absolute discretion, or (b) MCO has paid SAM the applicable Intellect Transfer Fee (as defined in Section 7.2.b.(iv)) upon the termination or expiration of this Agreement.

3.7 Notice of Board Meetings. Throughout the term of this Agreement, MCO shall notify SAM of meetings of the Board and provide SAM's representatives an opportunity to appear before the Board as SAM may request.

3.8 Cooperation by MCO, Board and MCO's Shareholders/Member Organizations. MCO and its Board acknowledges that the failure of its shareholders/member organizations to cooperate with the recommendations contained in the Board approved Management Plan may negatively impact the success of MCO.

#### ARTICLE 4

#### REPRESENTATIONS, WARRANTIES AND COVENANTS OF SAM

SAM makes the following representations and warranties to and covenants with MCO. SAM acknowledges that MCO is entering into this Agreement in material reliance on the accuracy of the following representations, warranties and covenants.

4.1 Authority; Enforceability. SAM has full power and authority to enter into and perform this Agreement, and the individual signing this Agreement on behalf of SAM has actual authority to do so. This Agreement has been duly authorized, executed, and delivered by SAM and represents the legal, valid, and binding agreement of SAM, enforceable against SAM in accordance with its terms.

4.2 Covenant Not To Hire. SAM will not, and will not permit any of its affiliates to, employ or offer to employ any employees of MCO, MCO's shareholders/member organizations to serve as the MCO CEO, CMO or CFO unless the Board gives its written consent thereto, which consent may be withheld by the Board in its sole and absolute discretion. SAM shall be permitted to hire employees of MCO shareholders/member organizations to fill other positions for the MCO. SAM shall be permitted, notwithstanding the provisions of this Section 4.2, to separately contract with MCO shareholders/member organizations for MCO-related services of physicians who are on staff with MCO, MCO or MCO's shareholders/member organizations for consulting services from such physicians as part-time medical directors of the MCO.

4.3 Access. Upon the written request of the Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, SAM and any of its affiliates providing services with a value or cost of \$10,000 or more during a twelve-month period shall make available to the requesting party the contracts, books, documents, and records necessary to

verify the nature and extent of the cost of providing Medicare services under this Agreement, if any; provided, however, that any applicable attorney-client, accountant-client, or other legal privilege shall not be deemed waived by virtue of this Agreement. Such inspection shall be available up to four years after the rendering of such services.

4.4 Licensing: Accreditation. SAM shall take all steps reasonably within its control and reasonably necessary to keep MCO fully licensed, and shall abide by all relevant laws, ordinances, rules, and regulations.

4.5 Reimbursements. SAM shall not do or omit to do anything to jeopardize Medicare, Medicaid, or other third-party reimbursement arrangements of MCO.

## ARTICLE 5

### INDEMNIFICATION; SAM'S INSURANCE

5.1 Indemnification by MCO. MCO shall indemnify, defend and hold SAM, its affiliates, and their respective directors, officers, employees, subcontractors and agents, harmless from and against any and all losses, claims, damages, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses related to the defense of any claims), arising out of this Agreement and which are attributable to (i) failure of MCO to perform any of its duties hereunder; (ii) any breach or default in MCO's representations, warranties and covenants hereunder; (iii) any act or omission by any employee of MCO relating to MCO activities; and (iv) any violation of any requirement applicable to MCO under any federal, state, or local environmental, hazardous waste or similar law or regulation relating to MCO activities; provided that such claims have not been caused by the negligence or intentional misconduct of SAM or any of SAM's employees, agents, contractors or anyone acting under its control or direction. Without limiting the generality of the indemnification set forth in the previous sentence, MCO, each of its current shareholders/member organizations, and, as a condition to their ownership of or membership in MCO, each of the future shareholders/member organizations of MCO, jointly and severally shall indemnify and hold harmless SAM and its directors, officers and agents from and against all claims, demands, costs, damages, liabilities and obligations (including attorneys' fees and accountants' fees) arising out of or relating to any dispute or controversy between MCO and/or any shareholder/member organization of MCO.

5.2 Indemnification by SAM. SAM shall indemnify, defend, and hold MCO and its directors, officers, employees and agents, harmless from and against all losses, claims, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses related to the defense of any claims), arising out of this Agreement and which are attributable to the acts or omissions of SAM or its employees, agents, or anyone acting under its control or direction, whether intentional or negligent, including but not limited to (i) failure of SAM to perform any of its duties hereunder; (ii) any breach or default in SAM's representations, warranties and covenants hereunder; (iii) any act arising or resulting from any direction given by

SAM or omission by any SAM employee relating to MCO activities; and (iv) any violation of any requirement applicable to SAM under any federal, state, or local environmental, hazardous waste or similar law or regulation relating to MCO activities; provided that such claims have not been caused by the negligence or intentional misconduct of the person or entity seeking indemnification pursuant to this Agreement or any of such person's or entity's employees, agents, contractors or anyone acting under its control or direction. The foregoing indemnities shall not apply to any acts or omissions by SAM or its employees, agents, or anyone acting under its control or direction, if such acts or omissions were at the direction or under the control of MCO.

5.3 Notice and Defense of Claims. MCO and SAM shall notify each other promptly of commencement of or indication that any claim may be asserted against any indemnified party or of any litigation or proceedings against it or any of its officers, directors, or trustees, as appropriate, of which it may be advised which could give rise to a claim by any indemnified party. The indemnitor shall be entitled to participate in the defense of any such action at its own expense, but such defense shall be conducted by counsel of recognized standing and reasonably satisfactory to the indemnified party. The indemnitor will furnish to the indemnified party copies of all pleadings in any action hereunder, permit the indemnified party to be an observer therein, and apprise the indemnified party of all material developments therein, all at the indemnitor's expense.

5.4 Insurance. SAM shall maintain insurance covering itself and its activities or provide the self-insurance covering itself and its activities listed below during the term of this Agreement.

a. General Liability. General Liability insurance with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence and annual aggregate, including coverage for bodily injury, property damage, and personal injury liability.

b. Errors and Omissions. Specialty Errors & Omissions Liability with a per claim and annual aggregate limit of not less than one million dollars (\$1,000,000).

c. Automobile Liability. Automobile Liability insurance with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence with respect to SAM's owned, hired or non-owned vehicles.

d. Commercial Crime. Commercial Crime insurance providing coverage for employee dishonesty with limits of liability of not less than five hundred thousand dollars (\$500,000).

The cost of the foregoing insurance shall be reimbursed to SAM by MCO within 30 days of SAM's payment for such insurance.

If MCO is unable to name SAM as an additional named insured on its professional liability insurance (and if requested by SAM, on its errors and omissions and directors and officers insurance) as required in Section 3.4, SAM will obtain professional liability insurance (and if

requested by SAM, errors and omissions insurance) under this Section, the cost of which shall be reimbursed to SAM by MCO within 30 days of SAM's payment for such insurance.

## ARTICLE 6

### FEES AND PAYMENTS

#### 6.1 MCO Management Base Fee.

a. Beginning on the effective date of MCO Medicaid Services under its Section 1115 waiver (the "Start Date") currently designated to be January 1, 1997, MCO will pay SAM a monthly management fee (the "Management Fee") for its Management Services pursuant to this Agreement. The Management Fee, together with the start-up incentive compensation described in Section 6.2.a., the annual supplemental compensation described in Section 6.2.b., and the annual profit sharing compensation described in Section 6.2.c. shall be SAM's full compensation for the services rendered by SAM after the Start-Date. SAM shall pay all expenses of its management of MCO pursuant to this Agreement, including but not limited to all costs of equipment, supplies and personnel, except for the costs included in the Start-Up Equipment Budget and the Start-Up Marketing Budget, and the ongoing costs of insurance and marketing, all of which shall be borne by MCO.

b. The Management Fee will be the greater of █% of Total Revenues (as defined below) (the "Percentage Fee"), or █ per month (the "Minimum Fee"). If on the first day of any month MCO enrollment is more than 60,000 members, the Percentage Fee for that month shall be reduced by █% for each 20,000 members in excess of 60,000, up to a maximum reduction of the Percentage Fee of █% (The Management Fee shall not be reduced to an amount less than the Minimum Fee by virtue of such reduction of the Percentage Fee.) The Management Fee will be estimated monthly based on SAM's estimate of the MCO's enrollment and its Total Revenues (defined as the MCO's gross revenues from capitation, reinsurance, third party liability ("TPL"), and interest, gains and other income) for the month, and will be paid by MCO on the first day of each month. As soon as actual enrollment and Total Revenues are known for the month (typically by the twentieth (20) of the following month), SAM will calculate any necessary adjustment to the month's Management Fee. Any increase or decrease in the Management Fee shall be added to or deducted from, as the case may be, the next month's estimated Management Fee.

6.2 Incentive Compensation; Late Start Penalty. In addition to the payment of the monthly Management Fee by MCO, MCO shall make the following payments of incentive compensation to SAM in the manner prescribed:

a. Start-Up Incentive Compensation. SAM believes that with its assistance, MCO will be ready to accept enrollment on the Start Date. For this on-time start-up, SAM shall be entitled to █ dollars (\$ █) incentive compensation if the MCO

is ready to accept enrollment on the Start Date; provided, however, that if the State of Maryland delays the Start Date to a date after April 1, 1997, such incentive compensation shall be [REDACTED] dollars (\$ [REDACTED]). If MCO is unable to accept enrollment on the Start Date, SAM will not receive any payment of incentive compensation. If MCO is unable to accept enrollment on the first day of the month following the first full calendar month after the Start Date (e.g., on February 1 if the Start Date is January 1), SAM shall pay MCO a penalty (the "Delay Penalty") for such delay in the amount of [REDACTED] dollars (\$ [REDACTED]). The incentive compensation, if any, will be paid by MCO to SAM within 30 days after the Start Date, and the Delay Penalty, if any, will be paid by SAM to MCO within 30 days after the first day of the month following the first calendar month after the Start Date.

b. Annual Supplemental Compensation. For operating MCO on an ongoing basis, SAM is eligible for annual supplemental compensation of up to [REDACTED]% of Total Revenue. Eligibility for supplemental compensation will be contingent upon MCO achieving certain operational and clinical targets as established by the Board of MCO. These targets may include, but are not limited to, the level of enrollment, utilization rates, member satisfaction rates, financial performance compared to budget and quality indicators. These targets will be mutually agreed upon by MCO and SAM prior to the start of each fiscal year as part of the Annual Management Plan. Annual supplemental compensation payments under this Section, if any, are due to SAM from MCO within 60 days of each fiscal year-end.

c. Annual Profit Sharing. For profitably operating MCO on an ongoing basis, MCO shall pay SAM the greater of (i) [REDACTED]% of the MCO's pretax income before incentive and supplemental compensation expense (other than incentive or supplemental compensation paid to SAM), or (ii) a discretionary amount determined by the Board based on discretionary factors.

### 6.3 Marketing Costs.

a. MCO will fund a start-up marketing budget (the "Start-Up Marketing Budget") in an amount not to exceed \$ [REDACTED] without the approval of the Board. The Start-Up Marketing Budget will be prepared by SAM, delivered by SAM to the Board, and subject to the Board's approval, which shall not be unreasonably withheld. MCO, with the agreement of SAM, may elect to provide services, materials and/or equipment that in SAM's estimation is equivalent or comparable to the items designated in the Start-Up Marketing Budget in lieu of funding. Items listed on the approved Start-Up Marketing Budget and not directly provided by MCO, may be purchased by SAM and will be paid for by MCO without further authorization by the Board within 30 days following SAM's presentation to MCO of the invoices or receipts therefor. Marketing costs in the Start-Up Marketing Budget will relate to activities aimed at encouraging and educating targeted Medicaid beneficiaries to become members of MCO. Such activities shall include but not be limited to advertising, printing of brochures, provider directories, pamphlets, placards and flyers, market research, and presentations to prospective members.

b. Beyond the Start-Up Marketing Budget, all advertising costs and marketing costs of MCO shall be borne by MCO. SAM shall make annual recommendations to MCO for advertising and marketing budgets. SAM shall administer and manage all marketing and advertising expenditures made pursuant to approved budgets without further authorization by the Board.

#### 6.4 Fee for Services Prior to Start Date.

a. MCO hereby agrees to pay SAM for Related Services, as well as all other services provided pursuant to this Agreement prior to October 1, 1996 on an hourly basis. \$ [REDACTED] hour will be paid for Related Services and all other services provided prior to October 1, 1996 by D.F. Schaller, M.D., A.L. Pelberg, M.D., and J.P. Anderson. \$ [REDACTED] hour will be paid for Related Services and all other services provided prior to October 1, 1996 provided by T.J. Hyland and J. Wilbershide. \$ [REDACTED] hour will be paid for Related Services and all other services provided prior to October 1, 1996 by the three senior level SAM staff (CEO, CFO and CMO) described in Section 2.2.a. above. \$ [REDACTED] hour will be paid for Related Services and all other services provided prior to October 1, 1996 by all other SAM professional staff as well as other subcontracted professional staff. SAM will submit monthly invoices to MCO for amounts due under this Section. Payment will be made by MCO to SAM within 20 days of the date of the invoice. Charges under this provision will likely fluctuate from month to month; however, charges for professional services by SAM and by Pacific Health Care Policy Group (exclusive of reimbursement for reasonable travel and related expenses, support staff and operating expenses at actual cost) will not exceed an aggregate of \$ [REDACTED] for the months of August and September, 1996 without the prior approval of MCO. MCO will also reimburse SAM for all related travel and out-of-pocket expenses.

b. Commencing on October 1, 1996, MCO hereby agrees to pay SAM the sum of \$ [REDACTED] per month for its services to organize and implement MCO prior to the Start Date. If the Start Date is delayed past January 1, 1997, MCO agrees to pay a Minimum Fee of \$ [REDACTED] per month until the Start Date. SAM will submit monthly invoices to MCO for amounts due under this Section. Payment will be made by MCO to SAM within 20 days of the date of the invoice.

### ARTICLE 7

#### TERM AND TERMINATION

7.1 Term. This Agreement shall be for an initial term commencing on the date of this Agreement and ending on December 31, 2001 subject to earlier termination as provided in Section 7.2 below. At the end of the initial term, this Agreement shall continue in effect for successive two year terms until terminated in accordance with Section 7.2 below.

7.2 Termination; Payments Upon Termination; Other Effects of Termination.

a. On or after November 1, 1996 and on or before six (6) months following the Start Date, MCO or SAM may terminate this Agreement, effective immediately (the "Section a. Termination Date"), if (A) MCO does not execute the Maryland Contract, (B) the Maryland Contract is canceled by State of Maryland prior to commencement of medicaid managed care operations of MCO on the Start Date, (C) the State of Maryland (if it has the right to approve this Agreement) disapproves this Agreement, (D) the initial capitation rates applicable to MCO for the provision of capitated medical services to Maryland's medicaid population are insufficient to make the operation of MCO economically feasible, such determination to be made by the terminating party in good faith, (E) MCO does not receive enrollment of sufficient covered lives within four (4) months following initial enrollment by the State of Maryland to make the operation of MCO economically feasible, such determination to be made by the terminating party in good faith, or (F) MCO does not have sufficient equity investors to make the operation of MCO economically feasible, such determination to be made by the terminating party in good faith. If this Agreement is terminated pursuant to this Section 7.2a:

(i) MCO will pay SAM for all services provided by SAM up to the Section a. Termination Date pursuant to Section 6.4a as and when provided for in Section 6.4a. In addition, MCO recognizes that SAM's rates for the services provided to MCO during the period prior to the execution of the Maryland Contract have been substantially discounted in reliance on the assumption that the Maryland Contract will be executed and MCO operations will commence. As a result, if this Agreement is terminated pursuant to this Section 7.2a, SAM will be entitled to bill MCO an additional \$75.00/hour for the all services provided by professionals prior to October, 1 1996 and an additional \$50,000 for each month beginning October 1, 1996 through the Section a Termination Date. Such additional payments shall be paid even if the aggregate of \$200,000 for the months of August and September, 1996 described in Section 6.4.a. is exceeded by virtue of the payment. The invoices for the additional billings will be paid within 20 days of the date of invoice.

(ii) MCO shall pay SAM the payments provided for in Section 6.4.b. for each month commencing prior to the Section a. Termination Date.

(iii) MCO will pay all current and pending invoices related to the approved Start-Up Equipment Budget and Start-Up Marketing Budget.

(iv) SAM shall be reimbursed for all expenses incurred for which reimbursement is required under this Agreement. On the Section a. Termination Date, MCO shall reimburse SAM for all other unfunded property, plant and equipment, including supplies, located within the State of Maryland, for their cost with payment being made on the Section a. Termination Date. MCO shall reimburse SAM all costs associated with SAM's termination of leases of real and personal property (including but not limited to equipment and other leases in lieu of purchases under the Start-Up Equipment Budget) located within the State of Maryland, and the continuing lease payments made by SAM on any such leases that SAM is unable to terminate.

(v) MCO shall return all materials prepared by SAM in connection with the development of MCO, and all related work-product of SAM in whatever form or medium, including all copies thereof. MCO shall not use or permit the use by any person or entity of any information contained in the materials or work-product.

b. Either party may terminate this Agreement for any reason whatsoever if written notice of termination is given by either party not less than 180 days prior to the date (the "Section b. Termination Date") on which the termination is to become effective; provided, however, that no such notice may be given prior to July 1, 2000. If this Agreement is terminated by either party under this Section 7.2b.:

(i) MCO shall pay SAM any and all Management Fees for all months commencing prior to the Section b. Termination Date under Section 6.1 and Section 6.2.

(ii) The party giving notice of termination recognizes that the other party has made a very substantial investment of time, resources and energy to the success of the MCO and accordingly agrees to pay a termination payment (the "Termination Payment") in the amount of \$5,000 multiplied by the number of months for the period from the Section b. Termination Date through December 31, 2001. The Termination Payment shall be made concurrently with the giving of notice of termination.

(iii) SAM shall be reimbursed for all expenses incurred for which reimbursement is required under this Agreement. MCO shall reimburse SAM all costs associated with SAM's termination of leases or real and personal property (including but not limited to equipment and other leases in lieu of purchases under the Start-Up Equipment Budget) located within the State of Maryland, and the continuing lease payments made by SAM on any such leases that SAM is unable to terminate.

(iv) MCO shall pay SAM an intellect transfer fee (the "Intellect Transfer Fee") for MCO's use after termination of the manuals, clinical guidelines, policies and procedures developed during the term of this Agreement in the amount of \$750,000 if the Section b. Termination Date is on or before December 31, 2001, \$500,000 if the Section b. Termination Date is after December 31, 2001 and on or before December 31, 2002, and \$250,000 if the Section b. Termination Date is after December 31, 2002. Payment to SAM of the Intellect Transfer Fee shall not in any way prevent SAM's ongoing use of such managed care materials, provided that SAM shall not use such materials in connection with any managed care program in Maryland. If MCO gives notice of termination to SAM, MCO shall pay the Intellect Transfer Fee to SAM immediately upon notice of termination of this Agreement; if SAM gives notice of termination to MCO, MCO shall pay the Intellect Transfer Fee to SAM within thirty (30) days following notice of termination.

c. If MCO does not receive a new or renewal contract from State of Maryland immediately following the expiration of the initial term of the Maryland Contract, MCO may

cancel this Agreement, effective on the date of the expiration of the Maryland Contract (the "Section c. Termination Date"). If this Agreement is terminated pursuant to this Section 7.2c:

(i) MCO shall pay SAM any and all Management Fees for all months commencing prior to the Section c. Termination Date under Sections 6.1 and 6.2.

(ii) SAM shall be reimbursed for all expenses incurred for which reimbursement is required under this Agreement. MCO shall reimburse SAM all costs associated with SAM's termination of leases or real and personal property (including but not limited to equipment and other leases in lieu of purchases under the Start-Up Equipment Budget) located within the State of Maryland, and the continuing lease payments made by SAM on any such leases that SAM is unable to terminate.

(iii) If MCO desires to retain the manuals, clinical guidelines, policies and procedures developed during the term of this Agreement for any reason, including but not limited to for use in making a future application to the State of Maryland, MCO shall pay SAM an Intellect Transfer Fee in the amount of \$500,000, which Intellect Transfer Fee shall be due and payable on the Section c. Termination Date. If MCO pays the Intellect Transfer Fee to SAM, Payment to SAM of the Intellect Transfer Fee shall not in any way prevent SAM's ongoing use of such managed care materials, provided that SAM shall not use such materials in connection with any managed care program in Maryland.

(iv) SAM will negotiate in good faith with MCO, if so requested by MCO, to provide MCO with services following the Section d. Termination Date for processing claims due prior to the Section d. Termination Date, and for any wind-down services needed by MCO. MCO shall pay SAM such compensation as may be agreed to by the parties for such services. Upon the expiration of the wind-down period, all member data, provider contracts and claims records in SAM's possession shall be delivered to MCO for MCO's required retention.

d. Either party may terminate this Agreement upon 60 days' written notice to the other party following the occurrence of any of the following events by or with respect to the other party:

(i) Cessation of business;

(ii) If either party voluntarily files a petition under any Federal or state statute relating to bankruptcy, insolvency, arrangement or reorganization, or files an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or fails to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of the party, or if the party is adjudged a bankrupt, or if a trustee or receiver is appointed for the party or the party's property, or if any substantial portion of the property becomes subject to the jurisdiction of a bankruptcy court, or if the party makes an assignment for the benefit of the party's creditors,

or if there is an attachment, execution or other judicial seizure of any portion of the party's assets and the seizure is not discharged within ten (10) days after its occurrence.

(iii) Commission of fraud or embezzlement as deemed to have occurred as determined by a court of law having legal jurisdiction;

(iv) Failure to correct negligence in the performance of obligations set forth under this Agreement or a material breach of this Agreement within a reasonable time following receipt of written notice that such negligence or material breach has occurred;

(v) Failure to comply with applicable state licensing requirements within a reasonable time following receipt of written notice that such failure has occurred.

If this Agreement is terminated by either party under this Section 7.2d.:

(A) MCO shall pay SAM any and all Management Fees for all months commencing prior to the Section d. Termination Date under Section 6.1 and Section 6.2.

(B) If MCO desires to retain the manuals, clinical guidelines, policies and procedures developed during the term of this Agreement for any reason, including but not limited to for use in future operations of MCO, MCO shall pay SAM an Intellect Transfer Fee in the amount of \$500,000, which Intellect Transfer Fee shall be due and payable on the Section d. Termination Date. If MCO pays the Intellect Transfer Fee to SAM, Payment to SAM of the Intellect Transfer Fee shall not in any way prevent SAM's ongoing use of such managed care materials, provided that SAM shall not use such materials in connection with any managed care program in Maryland.

(C) SAM will negotiate in good faith with MCO, if so requested by MCO, to provide MCO with services following the Section d. Termination Date for processing claims due prior to the Section d. Termination Date, and for any wind-down services needed by MCO. MCO shall pay SAM such compensation as may be agreed to by the parties for such services. Upon the expiration of the wind-down period, all member data, provider contracts and claims records in SAM's possession shall be delivered to MCO for MCO's required retention.

## ARTICLE 8

### CONFLICT OF INTEREST; COVENANT NOT TO COMPETE

8.1 Conflict of Interest. MCO acknowledges that in addition to providing services to MCO pursuant to this Agreement, SAM and its affiliates engage in a broad based and diverse medical management and consulting practice, which may from time to time result in SAM's or one or more of its affiliates' being involved in potential and real conflicts of interest with the performance by

SAM of its duties pursuant to this Agreement. MCO acknowledges that SAM and its affiliates engage in business relationships outside the State of Maryland with entities against whom MCO may compete. MCO acknowledges these possible potential conflict of interest and waives them on its own behalf and on behalf of the current and future shareholders/member organizations of MCO.

The Board shall take such steps as are necessary on a continuing basis to determine whether any member of the Board or Medical Staff has any direct or indirect financial interest or investment, in any contractor providing goods or services to MCO, and shall disclose any such relationship to SAM in order to enable SAM to discharge its duties under this Agreement effectively and efficiently.

#### 8.2 Covenant Not to Compete.

a. During the term of this Agreement, and for a period of one year following notice of termination of this Agreement (i) by SAM pursuant to Section 7.2.a.(D), 7.2.a.(E), 7.2.a.(F), or 7.2.b., or (ii) by MCO pursuant to Section 7.2.d, neither SAM nor any corporation, partnership or other business entity or person controlling, controlled by or under common control with SAM (each, a "Restricted Party") shall, directly or indirectly, operate, manage, own, control, finance or provide medical management or consulting services for the provision of capitated medical services to Maryland's Medicaid population, or engage in any discussions or negotiations about directly or indirectly operating, managing, owning, controlling, financing, or providing medical management or consulting services for the provision of capitated medical services to Maryland's Medicaid population, without the written consent of MCO.

b. After the Effective Date, neither SAM nor any Restricted Party shall disclose, directly or indirectly, to any person outside of MCO, any shareholder/member organization of MCO, or any attorney, accountant, actuary or other consultant to MCO or SAM (and in the case of such attorney, accountant, actuary or other consultant, such disclosure shall be limited to items reasonably necessary for such person to perform the services for which it was engaged by MCO or SAM) without the express authorization of MCO, any strategies, files and records, any proprietary data relating to MCO or any financial or other information about MCO not then in the public domain.

c. SAM acknowledges that the restrictions contained in this Section 8.2 are reasonable and necessary to protect the legitimate business interests of MCO and that any violation thereof by SAM would result in irreparable harm to MCO. Accordingly, SAM agrees that upon the violation by any of the Restricted Parties of any of the restrictions contained in this Section 8.2, MCO shall be entitled to obtain from any court of competent jurisdiction a preliminary and permanent injunction as well as any other relief provided at law, equity, under this Agreement or otherwise. In the event any of the foregoing restrictions are adjudged unreasonably in any proceeding, then the parties agree that the period of time or the scope of such restrictions (or both)

shall be adjusted to such a manner or for such a time (or both) as is adjudged to be reasonable.

## ARTICLE 9

### NOTICES

Any notice or other communication required or permitted by this Agreement shall be in writing and shall be given, and be deemed to have been given, if (a) delivered personally, (b) mailed, postage prepaid, return receipt requested, registered or certified mail, (c) deposited with any nationally-recognized overnight courier service with fees prepaid, for overnight delivery, or (d) sent by machine confirmed facsimile, addressed to the other party at the address set forth below or such other address as the party may designate in writing in a notice duly given pursuant to this Article:

To SAM: Schaller Anderson Maryland, L.L.C.  
c/o Schaller Anderson, Inc.  
3200 North Central Avenue  
Suite 680  
Phoenix, Arizona 85012  
Attention: Joseph P. Anderson

If to MCO: Maryland Care, Inc.  
c/o Maryland General Hospital  
827 Linden Avenue  
Baltimore, Maryland 21201  
Attn: James R. Wood, F.A.C.H.E.

## ARTICLE 10

### MISCELLANEOUS

10.1 Assignment. Neither party shall assign this Agreement to any entity other than an entity that acquires a substantial portion of the assets or stock of the party except with the prior written consent of the other party, which consent may be withheld by either party in its sole and absolute discretion.

10.2 Guarantee.

a. As a condition precedent to the effectiveness of this Agreement, MCO shall require its existing shareholder(s)/member organization(s) on the date of this Agreement to execute and deliver to SAM a guarantee (the "Guarantee") of the Maximum Guaranteed Obligations (as defined below), which Guarantee shall be in the form attached to this Agreement as Exhibit "A".

As a condition precedent to their becoming shareholders/member organizations of MCO, MCO shall require all future shareholders/member organizations of MCO to become guarantors under the Guarantee.

b. In the event this Agreement is terminated, it is recognized that SAM may be requested by MCO to continue MCO operations for a close-out period of up to ninety (90) days (the "Wind-Down Period") following termination of this Agreement. During the Wind-Down Period, SAM will continue to incur costs of operations, including potential severance and other termination costs or penalties. At the same time, MCO may not have sufficient funds to pay SAM for its management services under this Agreement. Each of the MCO shareholders shall severally guarantee, as provided below, the payment of actual expenses incurred by SAM during the Wind-Down Period (which SAM shall use its best efforts to minimize) not to exceed the following amounts (the "Maximum Guaranteed Obligations"):

i.

Average Enrollment Over Final Six Months of Agreement	Maximum Guaranteed Obligations
Less than 30,000	\$2,250,000
30,001 - 60,000	\$3,000,000
60,001 - 90,000	\$3,750,000
90,001 - and above	\$4,500,000

ii. The Maximum Guaranteed Obligations shall be increased by the amount of the Intellect Transfer Fee, if applicable, payable pursuant to the termination provisions of Article 7 of this Agreement. To the extent the Maximum Guaranteed Obligations are not exhausted through reimbursements to SAM during the Wind-Down Period, then any excess may be used to pay any Management Fees in arrears incurred but not paid for services rendered by SAM preceding the Wind-Down Period. Any applicable Intellect Transfer Fee and any Management Fees in arrears incurred but not paid for services rendered prior to the termination of this Agreement shall be included in the Maximum Guaranteed Obligations under all circumstances even if SAM does not provide services to MCO during the Wind-Down Period.

c. Each of the MCO's shareholders shall be severally liable to SAM for its pro rata portion of the Maximum Guaranteed Obligations based on their respective percentage ownership interest in MCO. Notwithstanding the foregoing, if any of the MCO shareholders holds 5% or less of the capital stock of the MCO, each of the other shareholders whose interest in the MCO is greater than 5% shall be liable pro rata for those shareholders holding 5% or less of the capital stock of MCO.

10.3 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns or designees.

10.4 Severability. Should any part of this Agreement be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement.

10.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one agreement.

10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Maryland.

10.7 Entire Agreement. This Agreement and the attached Appendices contain the entire agreement of the parties with respect to the transactions contemplated hereby, and no amendment or modification may be made unless in writing and signed by each of the parties. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the July 25, 1996 Letter Agreement between MCO and Schaller Anderson, Inc., the terms of this Agreement shall govern and supersede the conflicting or inconsistent provisions.

10.8 Time of the Essence. The parties agree that time is of the essence with respect to all provisions of this Agreement.

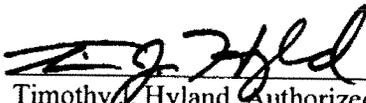
10.9 Change of Circumstances. If (i) Medicare, Medicaid, any third party payor or any federal, state or local legislative or regulatory authority adopts any law, rule, regulation, policy, procedure or interpretation thereof that establishes a material change in the method or amount of reimbursement or payment for services by MCO, or (ii) any or all such payors/authorities impose requirements that require a material change in the manner of the parties' operations under this Agreement and/or the costs related thereto, then, upon the request of either party materially affected by any such change in circumstances, the parties shall enter into good faith negotiations for the purpose of establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements and change of circumstances while preserving the original intent of this Agreement to the greatest extent possible. In the event the parties cannot agree on such amendment or modification within sixty (60) days, either party shall have the right to terminate this Agreement upon sixty (60) days' prior written notice.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date hereof.

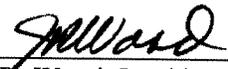
SIGNATURES APPEAR ON NEXT PAGE

SCHALLER ANDERSON OF MARYLAND,  
L.L.C.

By: Schaller Anderson, Inc., an Arizona corporation, its  
Manager

By:   
Timothy Hyland, Authorized Agent

MARYLAND CARE, INC.

By:   
J.R. Wood, President

## APPENDIX

SAM will oversee and manage the following areas of MCO administration (the "Management Services"):

### MEDICAL MANAGEMENT

Quality Management, including provider credentialing and assessing quality of care.

Utilization Management, including development and administration of prior authorization, referrals, case management and utilization review

Prevention and Wellness, including development and administration of EPSDT and perinatal programs

Policy and Procedures, including development and administration of practice parameters, formularies and guidelines specific to the Medicaid populations

### OPERATIONS

Provider Relations and Network Development, including provider contracting and training

Member/Customer Services, handbook, education, surveys and focus groups

Human Relations, including recruiting, hiring, training and retaining a quality work force

Claims and Encounters, including submission to State of Maryland and timely and accurate payments

Grievance, including tracking and resolving member and provider complaints

Marketing, including selection of agency and development of advertising and collateral

### FINANCE

Financial Reporting and Accounting, including monthly internal and regulatory reporting

Financial Planning and Analysis, including budgeting and financial modeling

EXHIBIT "A"

GUARANTY

DATED: September 16, 1996

PARTIES: MARYLAND GENERAL HEALTH SYSTEM, a Maryland non-profit corporation, together with any other persons or entities hereafter becoming parties to this Guaranty (collectively, the "Guarantors"); and

SCHALLER ANDERSON OF MARYLAND, L.L.C., a Maryland limited liability company ("SAM").

RECITALS:

A. Maryland Care, Inc., a Maryland corporation ("MCO") and SAM are parties to a Management Services Agreement dated September 16, 1996 (the "Management Services Agreement"), pursuant to which SAM has agreed to perform certain services on behalf of MCO, as more particularly described in the Management Services Agreement. Capitalized terms used and not otherwise defined in this Guaranty shall have the meanings ascribed to them in the Management Services Agreement.

B. The Guarantors own all of the issued and outstanding stock of MCO, and have been and will be substantially benefitted by SAM's execution, delivery and performance of the Management Services Agreement.

C. In order to induce SAM to enter into the Management Services Agreement, which SAM would not do but for the execution, delivery and performance of this Guaranty, the Guarantors have agreed to guarantee the payment to SAM of certain amounts now or hereafter owed by MCO to SAM pursuant to the Management Services Agreement, on the terms and subject to the conditions set forth in this Guaranty.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. The Guarantors guarantee to SAM the payment by MCO of the Maximum Guaranteed Obligations (as that term is defined in Section 10.2.b. of the Management Services Agreement)(such payment obligations are collectively referred to as the "Obligations"), such guaranty being irrespective of any circumstances that might affect the liability of a guarantor or surety. Upon any failure of MCO to pay all or any part of the Obligations to SAM under the Management Services Agreement when and as the same shall become due and payable, the Guarantors hereby promise to and will, upon receipt of written demand by SAM forthwith pay or cause to be paid to SAM in cash an amount equal to the unpaid amount plus interest at the rate of twelve percent (12%) per annum from and after the date of demand by SAM, and all expenses of collection. Each of the Guarantors shall be severally liable to SAM for its pro rata portion of the

Maximum Guaranteed Obligations based on their respective percentage ownership interest in MCO. Notwithstanding the foregoing, if any of the Guarantors holds 5% or less of the capital stock of the MCO, each of the other Guarantors whose interest in the MCO is greater than 5% shall be liable pro rata for those Guarantors holding 5% or less of the capital stock of MCO

2. The obligations of the Guarantors hereunder are independent of the Obligations of MCO, and a separate action or actions may be brought and executed against any one or more of the Guarantors, whether action is brought against one, some or all of the Guarantors, whether action is brought against MCO, or whether MCO is joined in such action or actions.

3. Guarantors expressly waive (i) any notice of the acceptance of this Guaranty; (ii) presentment, notice of dishonor, and protest; (iii) notice of any potential default or default under the Management Services Agreement or any indulgences granted under the Management Services Agreement, (iv) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty or of the Management Services Agreement, and (v) all other notices and demands otherwise required by law which the Guarantors may lawfully waive. No notice or demand on one or more of the Guarantors shall be deemed to be a waiver of the Obligations or of the right of SAM to take further action without notice or demand as provided herein. The obligations of the Guarantors under this Guaranty shall not be affected by: (a) the failure of SAM to assert any claim or demand or to enforce any right or remedy against MCO; (b) any extension or renewal of the Management Services Agreement; or (c) any rescission, waiver, amendment or modification of any of the terms or provisions of this Guaranty, or of the Management Services Agreement. The obligations of any one Guarantor under this Guaranty shall not be affected by the failure of SAM to assert any claim or demand or to enforce any right or remedy against any other Guarantor, the obligations of each Guarantor hereunder expressly being independent of the obligations of each of the other Guarantors. Unless and until all of the Obligations have been paid or performed in full, Guarantors shall not claim or enforce any right of subrogation, reimbursement or indemnity against MCO or any other guarantor of the Obligations or any other right or remedy which might otherwise arise on account of any payments made by any of them or of any other act or thing done by any of them on account of or in accordance with this Guaranty.

4. This Guaranty constitutes a Guaranty of payment and not of collection. The obligations of the Guarantors under this Guaranty shall not be subject to any reduction, limitation, impairment or termination for any reason, including, without limitation, any claim of waiver, relief, surrender, alteration or compromise, and shall not be subject to any defense of set off, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations. Without limiting the generality of the foregoing, the obligations of the Guarantors hereunder shall not be discharged or impaired or otherwise affected by the delay or failure of SAM to assert or enforce any claim, demand or remedy hereunder, by any waiver or modification of the Management Services Agreement, by any default, failure or delay, willful or otherwise in the performance of the Obligations, or by any other act, omission or

delay which might in any manner or to any extent vary the risk of the Guarantors or which might otherwise discharge the Guarantors by operation of law.

5. This Guaranty shall continue to be effective or shall be reinstated if any rights which SAM may have at law or in equity against the Guarantors by virtue hereof becomes subject to any bankruptcy limitation.

6. Time is of the essence of this Guaranty and of all of the terms, conditions and provisions hereof.

7. If any legal action is brought to enforce the terms of this Guaranty, the successful or prevailing party in that action will be entitled to recover its reasonable attorneys' fees and collection costs in addition to any other relief to which it may be entitled.

8. All notices and other communications given under this Guaranty shall be in writing and shall have deemed to have been received (a) upon delivery if personally delivered or (b) four (4) days after mailing if mailed registered or certified United States Mail, postage prepaid, addressed as follows:

If to Guarantors: c/o Maryland General Health System  
827 Linden Avenue  
Baltimore, Maryland 21201  
Attn: J.R. Wood

If to SAM: Schaller Anderson of Maryland, L.L.C.  
c/o Schaller Anderson, Inc.  
3200 North Central Avenue  
Suite 680  
Phoenix, Arizona 85012  
Attention: Joseph P. Anderson

or such other addresses as may hereafter be designated in writing in accordance with this Section.

9. Neither this Guaranty nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument in writing duly signed by or on behalf of the Guarantors and SAM.

10. The Guarantors' obligations under this Guaranty inure only to the benefit of SAM and its successors and assigns, and this Guaranty may only be assigned by SAM in connection with an assignment of the Management Services Agreement.

11. This Guaranty shall be governed by and construed in accordance with the internal laws, and not the laws of conflicts, of the State of Maryland.

**GUARANTORS:**

**MARYLAND GENERAL HEALTH SYSTEM**

By *[Signature]*  
Its *Pres. & CEO*

**SAM:**

**SCHALLER ANDERSON OF MARYLAND,  
L.L.C.**

By: Schaller Anderson, Inc., an Arizona  
corporation, its manager

By *[Signature]*  
Timothy J. Hyland, Authorized Agent

GUARANTY

DATED: September 16, 1996

PARTIES: MARYLAND GENERAL HEALTH SYSTEM, a Maryland non-profit corporation, together with any other persons or entities hereafter becoming parties to this Guaranty (collectively, the "Guarantors"); and  
SCHALLER ANDERSON OF MARYLAND, L.L.C., a Maryland limited liability company ("SAM").

RECITALS:

A. Maryland Care, Inc., a Maryland corporation ("MCO") and SAM are parties to a Management Services Agreement dated September 16, 1996 (the "Management Services Agreement"), pursuant to which SAM has agreed to perform certain services on behalf of MCO, as more particularly described in the Management Services Agreement. Capitalized terms used and not otherwise defined in this Guaranty shall have the meanings ascribed to them in the Management Services Agreement.

B. The Guarantors own all of the issued and outstanding stock of MCO, and have been and will be substantially benefitted by SAM's execution, delivery and performance of the Management Services Agreement.

C. In order to induce SAM to enter into the Management Services Agreement, which SAM would not do but for the execution, delivery and performance of this Guaranty, the Guarantors have agreed to guarantee the payment to SAM of certain amounts now or hereafter owed by MCO to SAM pursuant to the Management Services Agreement, on the terms and subject to the conditions set forth in this Guaranty.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. The Guarantors guarantee to SAM the payment by MCO of the Maximum Guaranteed Obligations (as that term is defined in Section 10.2.b. of the Management Services Agreement)(such payment obligations are collectively referred to as the "Obligations"), such guaranty being irrespective of any circumstances that might affect the liability of a guarantor or surety. Upon any failure of MCO to pay all or any part of the Obligations to SAM under the Management Services Agreement when and as the same shall become due and payable, the Guarantors hereby promise to and will, upon receipt of written demand by SAM forthwith pay or cause to be paid to SAM in cash an amount equal to the unpaid amount plus interest at the rate of twelve percent (12%) per annum from and after the date of demand by SAM, and all expenses of collection. Each of the Guarantors shall be severally liable to SAM for its pro rata portion of the

Maximum Guaranteed Obligations based on their respective percentage ownership interest in MCO. Notwithstanding the foregoing, if any of the Guarantors holds 5% or less of the capital stock of the MCO, each of the other Guarantors whose interest in the MCO is greater than 5% shall be liable pro rata for those Guarantors holding 5% or less of the capital stock of MCO

2. The obligations of the Guarantors hereunder are independent of the Obligations of MCO, and a separate action or actions may be brought and executed against any one or more of the Guarantors, whether action is brought against one, some or all of the Guarantors, whether action is brought against MCO, or whether MCO is joined in such action or actions.

3. Guarantors expressly waive (i) any notice of the acceptance of this Guaranty; (ii) presentment, notice of dishonor, and protest; (iii) notice of any potential default or default under the Management Services Agreement or any indulgences granted under the Management Services Agreement, (iv) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty or of the Management Services Agreement, and (v) all other notices and demands otherwise required by law which the Guarantors may lawfully waive. No notice or demand on one or more of the Guarantors shall be deemed to be a waiver of the Obligations or of the right of SAM to take further action without notice or demand as provided herein. The obligations of the Guarantors under this Guaranty shall not be affected by: (a) the failure of SAM to assert any claim or demand or to enforce any right or remedy against MCO; (b) any extension or renewal of the Management Services Agreement; or (c) any rescission, waiver, amendment or modification of any of the terms or provisions of this Guaranty, or of the Management Services Agreement. The obligations of any one Guarantor under this Guaranty shall not be affected by the failure of SAM to assert any claim or demand or to enforce any right or remedy against any other Guarantor, the obligations of each Guarantor hereunder expressly being independent of the obligations of each of the other Guarantors. Unless and until all of the Obligations have been paid or performed in full, Guarantors shall not claim or enforce any right of subrogation, reimbursement or indemnity against MCO or any other guarantor of the Obligations or any other right or remedy which might otherwise arise on account of any payments made by any of them or of any other act or thing done by any of them on account of or in accordance with this Guaranty.

4. This Guaranty constitutes a Guaranty of payment and not of collection. The obligations of the Guarantors under this Guaranty shall not be subject to any reduction, limitation, impairment or termination for any reason, including, without limitation, any claim of waiver, relief, surrender, alteration or compromise, and shall not be subject to any defense of set off, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations. Without limiting the generality of the foregoing, the obligations of the Guarantors hereunder shall not be discharged or impaired or otherwise affected by the delay or failure of SAM to assert or enforce any claim, demand or remedy hereunder, by any waiver or modification of the Management Services Agreement, by any default, failure or delay, willful or otherwise in the performance of the Obligations, or by any other act, omission or

delay which might in any manner or to any extent vary the risk of the Guarantors or which might otherwise discharge the Guarantors by operation of law.

5. This Guaranty shall continue to be effective or shall be reinstated if any rights which SAM may have at law or in equity against the Guarantors by virtue hereof becomes subject to any bankruptcy limitation.

6. Time is of the essence of this Guaranty and of all of the terms, conditions and provisions hereof.

7. If any legal action is brought to enforce the terms of this Guaranty, the successful or prevailing party in that action will be entitled to recover its reasonable attorneys' fees and collection costs in addition to any other relief to which it may be entitled.

8. All notices and other communications given under this Guaranty shall be in writing and shall have deemed to have been received (a) upon delivery if personally delivered or (b) four (4) days after mailing if mailed registered or certified United States Mail, postage prepaid, addressed as follows:

If to Guarantors: c/o Maryland General Health System  
827 Linden Avenue  
Baltimore, Maryland 21201  
Attn: J.R. Wood

If to SAM: Schaller Anderson of Maryland, L.L.C.  
c/o Schaller Anderson, Inc.  
3200 North Central Avenue  
Suite 680  
Phoenix, Arizona 85012  
Attention: Joseph P. Anderson

or such other addresses as may hereafter be designated in writing in accordance with this Section.

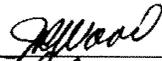
9. Neither this Guaranty nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument in writing duly signed by or on behalf of the Guarantors and SAM.

10. The Guarantors' obligations under this Guaranty inure only to the benefit of SAM and its successors and assigns, and this Guaranty may only be assigned by SAM in connection with an assignment of the Management Services Agreement.

11. This Guaranty shall be governed by and construed in accordance with the internal laws, and not the laws of conflicts, of the State of Maryland.

**GUARANTORS:**

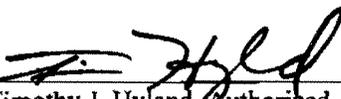
MARYLAND GENERAL HEALTH SYSTEM

By   
Its Pres. & CEO

**SAM:**

SCHALLER ANDERSON OF MARYLAND,  
L.L.C.

By: Schaller Anderson, Inc., an Arizona  
corporation, its manager

By   
Timothy J. Hyland, Authorized Agent

AMENDED AND RESTATED  
MCO MANAGEMENT SERVICES AGREEMENT

DATED: November ~~29~~, 1996  
EFFECTIVE DATE: September 16, 1996  
PARTIES: MARYLAND CARE, INC., a Delaware corporation ("MCO"); and  
SCHALLER ANDERSON OF MARYLAND, L.L.C., a Maryland  
limited liability company ("SAM").

RECITALS:

- A. MCO is a managed care organization which has been formed to serve persons eligible for the Maryland Medicaid Reform Program under a Section 1115 waiver submitted to the Health Care Financing Administration.
- B. MCO desires SAM to provide Management Services (as defined below) and Related Services (as defined below) for MCO.
- C. SAM is willing to provide Management Services and Related Services for MCO, on the terms and subject to the conditions set forth in this Agreement.
- D. MCO and SAM are parties to a Management Services Agreement dated September 16, 1996 (the "Original Agreement"). MCO and SAM have agreed to certain modifications to the Original Agreement, all of which are incorporated in this Agreement, and desire to amend and restate the Original Agreement in its entirety on the terms and conditions set forth in this Agreement.

ACCORDINGLY, the parties agree as follows:

ARTICLE I

ENGAGEMENT; RETENTION OF AUTHORITY BY MCO

1.1 Effect of Agreement. This Agreement amends and restates the Original Agreement in its entirety. Upon the execution of this Agreement, the Original Agreement is hereby terminated and is of no further force or effect.

1.2 Engagement. MCO engages SAM to perform the functions and to provide the services described in this Agreement, and SAM accepts the engagement, on the terms and subject to the conditions set forth in this Agreement. Under the terms of MCO's Articles of Incorporation, authority for administration of this Agreement is vested in MCO's Board of Directors (the "Board"). MCO hereby delegates to SAM the general authority to manage MCO, including performing the services delineated in the Appendix (the "Management Services"). SAM will also direct, prepare and submit to the Board for its approval, any responses which MCO may be required to make to requests for applications issued by the State of Maryland, including the Draft Guidelines for MCO Applications previously issued by the State of Maryland (the "Related Services"). Related Services include production of application documents for the initial contract to be entered into between MCO and the State of Maryland for the provision of capitated medical services to Maryland's Medicaid populations (the "Maryland Contract") and assisting in the negotiation of the Maryland Contract, assessment of equity partners and evaluation of alternative governance structures, attending MCO-related meetings and providing consulting and assessment services required to develop and implement MCO.

1.3 Control by MCO. MCO shall at all times, through the Board, exercise ultimate control over and authority for the policies and operations of MCO. The Board may, but shall not be obligated to, adopt as MCO policy the recommendations and/or proposals made by SAM.

1.4 Directives to SAM; Reliance by SAM. SAM shall perform the functions and services set forth in this Agreement, in accordance with the policies and directives of the Board provided to SAM from time to time. MCO, through the Board, shall communicate all of its policies and directives to SAM, and SAM shall be subject to and responsible for any written policy or directive. SAM shall follow, and shall be entitled to rely on and assume the validity of all communications from the Board, the Chairman of the Board, or a designee of the Board. SAM may rely on the recommendations of committees of the Board and MCO members' medical staffs and their designated committees and departmental chairmen (collectively, the "Medical Staff") about the quality of professional services provided by individuals with clinical privileges at MCO member hospitals. SAM may also rely on the recommendations of MCO and its designated committees about the quality of professional services provided by its shareholder/member organizations and their physicians. Notwithstanding the preceding two sentences, nothing herein shall be construed as relieving SAM from responsibility for the credentialing function as well as other functions under the management responsibility of SAM, all of which management responsibility shall be subject to oversight by the Board.

1.5 Independent Contractor. SAM shall serve as an independent contractor in performing its functions and providing services pursuant to this Agreement. MCO and SAM are not and will not be deemed to be partners, joint venturers, co-venturers, or principal and agent, and neither party shall be liable either primarily or as guarantor for debts or other obligations of the other party, other than items (such as Start-Up Equipment Budget and Start-Up Marketing Budget items) which expressly require reimbursement pursuant to this Agreement.

## ARTICLE 2

### DUTIES OF SAM

2.1 General Duties. SAM shall perform the Management Services and Related Services described in this Agreement including managing MCO. In performing its obligations under this Agreement, SAM shall act at all times in a professional manner, devoting such efforts as SAM deems appropriate in good faith and with reasonable diligence to the performance of this Agreement. SAM shall assign such personnel to the overall management and overall direction of MCO pursuant to this Agreement as it deems appropriate, including general oversight and participation of J.P. Anderson, A.L. Pelberg, M.D., and T.J. Hyland, or other personnel reasonably acceptable to MCO, as long as they are employed by SAM or an affiliate. In managing MCO, SAM shall implement the Board's policies and directives and use its best efforts to cause MCO to arrange for quality health care, subject to constraints imposed by the limitations of financial resources available to MCO, competition, the acts and omissions of the State of Maryland, applicable laws, and other relevant factors. SAM shall serve as the primary liaison for MCO with the State of Maryland. In addition to providing the SAM Employees (as defined in Section 2.2a., below), SAM shall arrange for all other necessary MCO administrative services, including its administrative services subcontractors; provided, however, that SAM shall remain fully responsible for any such administrative services subcontractor's performance or failure to perform any and all duties of SAM under this Agreement. All such administrative services subcontractors shall be paid by SAM unless such services are retained solely by MCO. Nothing in this section shall be construed as to limit MCO's obligation for payments stipulated in Sections 6 and 7.

#### 2.2 Specific Duties.

a. SAM Employees. SAM shall provide MCO with the services of the personnel for the management of MCO specified below, all of whom shall be employees of SAM (the "SAM Employees"): A chief executive officer (CEO) of MCO, a chief medical officer (CMO) of MCO, and a chief financial officer (CFO) of MCO, and such other personnel as SAM deems necessary or appropriate to provide the Management Services. All SAM Employees shall be and remain employees of SAM and not employees or independent contractors of MCO throughout the term of this Agreement. SAM shall determine the amount and nature of and shall pay compensation to the SAM Employees for all services rendered by them in connection with this Agreement. SAM shall have the full responsibility for all wages, social security, worker's compensation, unemployment insurance and other benefits, which may, but shall not be required to, include vacation pay, sick leave, retirement benefits, disability insurance and other employee benefits, (collectively, "Pay and Benefits") for all personnel which it employs pursuant to this Agreement, and shall indemnify and hold MCO harmless against and from any liability or expense (including reasonable attorneys' fees) incurred by MCO in connection with the payment or provision, or failure to pay or provide, any such Pay and Benefits. The Board shall have input to SAM's selection of MCO's CEO, CFO and CMO, and their appointment shall be subject to the Board's approval, which shall not be unreasonably withheld. If the Board reasonably determines that a

CFO, CEO or CMO of MCO (a "Senior Employee") is not adequately performing his or her duties and responsibilities to MCO, the Board shall so inform SAM, and SAM shall thereafter take such corrective action as may be appropriate under the circumstances, including, if so requested by the Board following a reasonable period for SAM's taking of such corrective action, the replacement of such Senior Employee. If the Board reasonably requests replacement of a Senior Employee, SAM shall commence recruitment efforts to replace the Senior Employee, and upon successful recruitment of a replacement Senior Employee, which replacement Senior Employee shall be subject to the Board's approval, SAM shall replace the Senior Employee with the replacement employee.

b. Budgets. During the term of this Agreement, SAM shall submit to the Board for approval, disapproval, or modification by the Board, an annual MCO operating budget, including capital and marketing expenditures (if appropriate) (the "Budget"), designed to meet applicable law and regulations and the goals and objectives of the Board. SAM shall submit to the Board, for approval, disapproval or modification by the Board, from time to time during the fiscal year, proposed revisions to the Budget to reflect material changes in the Budget during the fiscal year. Upon request, SAM will provide MCO with any additional financial information reasonably required to report MCO activity.

c. Accounting and Reports. SAM shall establish and administer accounting procedures and controls for MCO in accordance with applicable procedures and directives, and in accordance with generally accepted accounting principles. SAM shall prepare materials required in connection with third party reimbursement or payment contracts or programs in which MCO participates. SAM shall submit to the Board monthly and annual balance sheets, monthly and year-to-date expenditure and revenue reports as compared to Budget and for the same period in the prior year for MCO, and monthly reports summarizing SAM's management activities. Annual financial statements shall be provided to MCO as soon as practical but in no event later than 120 days following the close of each fiscal year. For the purpose of this contract, the term "fiscal year" shall mean the twelve (12) month period beginning each January 1. The operations of MCO shall be audited annually by an independent certified public accounting firm recommended by SAM and approved by the Board. SAM shall pay the reasonable cost of such audit. SAM will make available to the auditors all documents and records reasonably requested in connection with any external or internal audit of MCO.

d. Payments of Claims and Accounts Payable, Sub-Capitated Expenses and Other Liabilities. SAM shall exercise reasonable care in applying MCO's funds to the timely payment of its claims and accounts payable, sub-capitated expenses, and other liabilities and obligations, and shall apply such funds in accordance with the Board's directives. SAM's obligations under this paragraph, however, are subject to the availability of MCO funds to make such payments. SAM will not be obligated to make any payments from its own funds or resources or to advance any monies to MCO.

e. Purchase and Lease of Equipment and Supplies.

(1) MCO will reimburse SAM for a start-up equipment budget (the "Start-Up Equipment Budget") in an amount not to exceed \$ [REDACTED]. The Start-Up Equipment Budget will be prepared by SAM, delivered by SAM to the Board, and subject to the Board's approval, which shall not be unreasonably withheld. The Start-Up Equipment Budget will include, but not be limited to, personal computers, other information systems equipment, work stations, telephone system and equipment, information systems modifications, tenant improvements, copiers and other equipment to be used in providing services pursuant to this Agreement. The parties anticipate that some of the items to be acquired under the Start-Up Equipment Budget will be purchased; all items purchased shall be the property of MCO, together with all additions thereto and replacements thereof. The parties also anticipate that some of the items to be acquired under the Start-Up Equipment Budget will be leased. MCO shall be responsible for and shall pay directly to the lessors all lease payments and other charges for those items. All leased items will be the property of the equipment lessors during the terms of the leases, all of which shall expire at or prior to three years following the date of this Agreement. Upon the expiration of the leases, MCO will pay the purchase price for the leased items, and all such items will be the property of MCO. If this Agreement is terminated prior to the expiration of a particular lease term, MCO shall pay all termination charges under the leases, together with all purchase prices for the items, and all of the items shall be the property of MCO; provided, however, that if this Agreement is terminated prior to the Start-Date, MCO shall be entitled to make such arrangements as it deems appropriate with respect to such items, including returning such items to the lessors thereof, and any items not returned to the lessors shall be the property of MCO. MCO, with the agreement of SAM, may elect to contribute materials and/or equipment to SAM that in SAM's estimation are equivalent or comparable to the items designated in the Start-Up Equipment Budget in lieu of equipment expenditures funding. Items (including Information System modifications) listed on the approved Start-Up Equipment Budget and not directly provided by MCO, may be purchased by SAM, and will be paid for by MCO or the payment therefor reimbursed by MCO without further authorization by the Board within 30 days of receiving an invoice from SAM.

(2) Beyond the Start-Up Equipment Budget, SAM shall manage all purchases and leases of equipment, and all materials and services which SAM deems necessary or proper in the operation of MCO. All such equipment and materials shall be purchased or leased at SAM's expense, or, in the case of certain electronic membership eligibility verification, electronic claims processing, electronic referral and other information systems-related expenses, at the expense of the providers to MCO, and all such equipment and materials shall be the property of SAM. Upon termination of this Agreement, and regardless of the cause of termination, MCO shall immediately reimburse SAM an amount equal to the cost of equipment, materials and supplies, less accumulated depreciation, purchased at SAM's expense beyond the Start-Up Equipment Budget. Upon SAM's receipt of such reimbursement, SAM shall execute such assignment and bills of sale reasonably requested by MCO to transfer title to such equipment, materials and supplies to MCO.

(3) MCO shall abide by all purchase or lease terms for items included in the Start-Up Equipment Budget and Start-Up Marketing Budget and any subsequent Budget.

(4) Notwithstanding the agreement of SAM and MCO that the Start-Up Equipment Budget will not exceed \$ [REDACTED] the parties acknowledge that that amount is as a result of SAM's good faith estimates of MCO's start-up needs as of the date of this Agreement. If the actual cost of system modifications and other start-up acquisitions vary from SAM's current estimates of the costs, SAM and MCO agree to negotiate in good faith to correspondingly increase or decrease the Start-Up Equipment Budget to reflect the increase or decrease in the costs, all of which costs shall be borne solely by MCO, and all of which cost savings shall inure solely to the benefit of MCO.

f. Quality Assessment and Improvement. SAM shall recommend to the Board quality assessment and improvement programs designed to meet standards required by appropriate certification agencies and the policies and procedures of MCO. SAM shall lead the implementation of the quality assessment and improvement programs approved by the Board, shall provide overall management direction of the programs, and shall assure the reporting of the results of the programs to the Board on terms to be specified in the quality assessment and improvement plan to be adopted by the Board.

g. Management Plan and Report.

(1) Development of Management Plan: Board Approval. Upon execution of this Agreement, SAM shall submit to the Board for its review and approval an initial implementation plan for the period ending December 31, 1996. An annual management plan (each, a "Management Plan") will be submitted by SAM on or before December 1 of each year of this Agreement, commencing with the Management Plan to be in effect from January 1, 1997 through December 31, 1997. SAM will submit to the Board oral and/or written information about the development of the Management Plan to assist the Board in making an informed decision regarding approval or disapproval of the Management Plan.

(2) Reports by SAM. On or before March 1 of each year, commencing in 1998, SAM shall deliver to the Board a written report on the completion of the goals and objectives set forth in the Management Plan approved by the Board for the previous fiscal year. SAM shall also deliver to the Board such additional oral or written reports as the Board may reasonably request from time to time.

h. MCO Reports. SAM shall timely file all MCO reports required by applicable law to be filed with third parties, and cause such reports and the information and data therein contained to have been properly and accurately compiled and completed, unless SAM is unable to do so due to the actions of MCO or third parties or due to the failure of MCO or third parties to provide information or data necessary to file such MCO reports.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS  
OF MCO

MCO makes the following representations and warranties to and covenants with SAM. MCO acknowledges that SAM is entering into this Agreement with MCO in material reliance on the accuracy of the following representations, warranties and covenants.

3.1 Authority: Enforceability. MCO has full power and authority to enter into and perform this Agreement, and the individual signing this Agreement on behalf of MCO has actual authority to do so. This Agreement has been duly authorized, executed, and delivered by MCO and represents the legal, valid, and binding agreement of MCO, enforceable against MCO in accordance with its terms. Upon execution of this Agreement, MCO shall advise SAM in writing of the members of the Board, its Chairman, and any designees with authority to direct SAM as contemplated by Section 1.3 of this Agreement. SAM may rely on such notice until it is revised by a subsequent written notice.

3.2 No Conflicts. The execution, delivery, and performance of this Agreement by MCO does not require the consent, waiver, approval, license, or authorization of any person or public authority which has not been obtained and evidence of which delivered to SAM prior to the date of this Agreement, except for the Section 1115 waiver applied for from HCFA.

3.3 Reimbursements. MCO and its shareholders/member organizations shall not do or omit to do anything to jeopardize Medicare, Medicaid, or other third-party reimbursement arrangements of the MCO.

3.4 Insurance. MCO will obtain and pay for, for the duration of this Agreement, insurance of such type and with such limits which may be required of MCO by the State of Maryland from time to time, which insurance shall name SAM as an additional named insured, and shall contain a waiver of subrogation by MCO and the insurers against SAM except for the intentional misconduct of SAM. Such insurance will include but not be limited to professional liability insurance, directors and officers liability and errors and omissions insurance. A certificate of insurance will be delivered to SAM within 10 days of the signing of this Agreement, and thereafter not less than thirty (30) days prior to the expiration of any prior certificate, each such certificate to provide that the insurance to which it pertains will not be canceled or not renewed without at least thirty (30) days' prior written notice to SAM.

If facilities or equipment as described in Section 2.2(e) is provided by MCO shareholders/member organizations, MCO agrees, and any other shareholder/member organization providing the facilities or equipment, will, as a condition to providing such facilities or equipment, agree to be responsible for risk of loss to such facilities, contents, and equipment and agrees to

waive subrogation against SAM and cause its insurers to waive subrogation except for the intentional misconduct of SAM.

If any of the insurance provided pursuant to this Section 3.4 is on a "claims made" basis, upon termination of this Agreement, or if an insured party changes insurance carriers during the term of this Agreement, the insured party shall maintain or obtain prior acts coverage or purchase optional extension period (known as "tail") coverage to insure that coverage in the required amounts is maintained for claims made at any time related to an occurrence during the term of this Agreement.

3.5 Performance Bond and Capitalization. To the extent that the rules established from time to time by State of Maryland require there to be performance bonds or other capitalization provided by or with respect to the MCO, MCO shall procure and provide the same at its sole expense.

3.6 Covenant Not to Hire. MCO and, as a condition of their ownership of or membership in MCO, MCO's current shareholders/member organizations have agreed and its future shareholders/member organizations will agree not to, and will not permit any of their affiliates to, employ, offer to employ, or induce or facilitate the acceptance of employment by SAM employees serving as the MCO CEO, CMO or CFO themselves or by any other party until one year following the termination or expiration of this Agreement unless (a) SAM gives its written consent thereto, which consent may be withheld by SAM in its sole and absolute discretion, or (b) MCO has paid SAM the applicable Intellect Transfer Fee (as defined in Section 7.2.b.(iv)) upon the termination or expiration of this Agreement.

3.7 Notice of Board Meetings. Throughout the term of this Agreement, MCO shall notify SAM of meetings of the Board and provide SAM's representatives an opportunity to appear before the Board as SAM may request.

3.8 Cooperation by MCO, Board and MCO's Shareholders/Member Organizations. MCO and its Board acknowledges that the failure of its shareholders/member organizations to cooperate with the recommendations contained in the Board approved Management Plan may negatively impact the success of MCO.

#### ARTICLE 4

#### REPRESENTATIONS, WARRANTIES AND COVENANTS OF SAM

SAM makes the following representations and warranties to and covenants with MCO. SAM acknowledges that MCO is entering into this Agreement in material reliance on the accuracy of the following representations, warranties and covenants.

4.1 Authority; Enforceability. SAM has full power and authority to enter into and perform this Agreement, and the individual signing this Agreement on behalf of SAM has actual authority to do so. This Agreement has been duly authorized, executed, and delivered by SAM and represents the legal, valid, and binding agreement of SAM, enforceable against SAM in accordance with its terms.

4.2 Covenant Not To Hire. SAM will not, and will not permit any of its affiliates to, employ or offer to employ any employees of MCO, MCO's shareholders/member organizations to serve as the MCO CEO, CMO or CFO unless the Board gives its written consent thereto, which consent may be withheld by the Board in its sole and absolute discretion. SAM shall be permitted to hire employees of MCO shareholders/member organizations to fill other positions for the MCO. SAM shall be permitted, notwithstanding the provisions of this Section 4.2, to separately contract with MCO shareholders/member organizations for MCO-related services of physicians who are on staff with MCO, MCO or MCO's shareholders/member organizations for consulting services from such physicians as part-time medical directors of the MCO.

4.3 Access. Upon the written request of the Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, SAM and any of its affiliates providing services with a value or cost of \$10,000 or more during a twelve-month period shall make available to the requesting party the contracts, books, documents, and records necessary to verify the nature and extent of the cost of providing Medicare services under this Agreement, if any; provided, however, that any applicable attorney-client, accountant-client, or other legal privilege shall not be deemed waived by virtue of this Agreement. Such inspection shall be available up to four years after the rendering of such services.

4.4 Licensing; Accreditation. SAM shall take all steps reasonably within its control and reasonably necessary to keep MCO fully licensed, and shall abide by all relevant laws, ordinances, rules, and regulations.

4.5 Reimbursements. SAM shall not do or omit to do anything to jeopardize Medicare, Medicaid, or other third-party reimbursement arrangements of MCO.

## ARTICLE 5

### INDEMNIFICATION; SAM'S INSURANCE

5.1 Indemnification by MCO. MCO shall indemnify, defend and hold SAM, its affiliates, and their respective directors, officers, employees, subcontractors and agents, harmless from and against any and all losses, claims, damages, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses related to the defense of any claims), arising out of this Agreement and which are attributable to (i) failure of MCO to perform any of its duties hereunder; (ii) any breach or default in MCO's representations, warranties and covenants hereunder; (iii) any act or omission by any employee of MCO relating to MCO activities; and

(iv) any violation of any requirement applicable to MCO under any federal, state, or local environmental, hazardous waste or similar law or regulation relating to MCO activities; provided that such claims have not been caused by the negligence or intentional misconduct of SAM or any of SAM's employees, agents, contractors or anyone acting under its control or direction. Without limiting the generality of the indemnification set forth in the previous sentence, MCO, each of its current shareholders/member organizations, and, as a condition to their ownership of or membership in MCO, each of the future shareholders/member organizations of MCO, jointly and severally shall indemnify and hold harmless SAM and its directors, officers and agents from and against all claims, demands, costs, damages, liabilities and obligations (including attorneys' fees and accountants' fees) arising out of or relating to any dispute or controversy between MCO and/or any shareholder/member organization of MCO.

5.2 Indemnification by SAM. SAM shall indemnify, defend, and hold MCO and its directors, officers, employees and agents, harmless from and against all losses, claims, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses related to the defense of any claims), arising out of this Agreement and which are attributable to the acts or omissions of SAM or its employees, agents, or anyone acting under its control or direction, whether intentional or negligent, including but not limited to (i) failure of SAM to perform any of its duties hereunder; (ii) any breach or default in SAM's representations, warranties and covenants hereunder; (iii) any act arising or resulting from any direction given by SAM or omission by any SAM employee relating to MCO activities; and (iv) any violation of any requirement applicable to SAM under any federal, state, or local environmental, hazardous waste or similar law or regulation relating to MCO activities; provided that such claims have not been caused by the negligence or intentional misconduct of the person or entity seeking indemnification pursuant to this Agreement or any of such person's or entity's employees, agents, contractors or anyone acting under its control or direction. The foregoing indemnities shall not apply to any acts or omissions by SAM or its employees, agents, or anyone acting under its control or direction, if such acts or omissions were at the direction or under the control of MCO.

5.3 Notice and Defense of Claims. MCO and SAM shall notify each other promptly of commencement of or indication that any claim may be asserted against any indemnified party or of any litigation or proceedings against it or any of its officers, directors, or trustees, as appropriate, of which it may be advised which could give rise to a claim by any indemnified party. The indemnitor shall be entitled to participate in the defense of any such action at its own expense, but such defense shall be conducted by counsel of recognized standing and reasonably satisfactory to the indemnified party. The indemnitor will furnish to the indemnified party copies of all pleadings in any action hereunder, permit the indemnified party to be an observer therein, and apprise the indemnified party of all material developments therein, all at the indemnitor's expense.

5.4 Insurance. SAM shall maintain insurance covering itself and its activities or provide the self-insurance covering itself and its activities listed below during the term of this Agreement.

a. General Liability. General Liability insurance with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence and annual aggregate, including coverage for bodily injury, property damage, and personal injury liability.

b. Errors and Omissions. Specialty Errors & Omissions Liability with a per claim and annual aggregate limit of not less than one million dollars (\$1,000,000).

c. Automobile Liability. Automobile Liability insurance with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence with respect to SAM's owned, hired or non-owned vehicles.

d. Commercial Crime. Commercial Crime insurance providing coverage for employee dishonesty with limits of liability of not less than five hundred thousand dollars (\$500,000).

The cost of the foregoing insurance shall be reimbursed to SAM by MCO within 30 days of SAM's payment for such insurance.

If MCO is unable to name SAM as an additional named insured on its professional liability insurance (and if requested by SAM, on its errors and omissions and directors and officers insurance) as required in Section 3.4, SAM will obtain professional liability insurance (and if requested by SAM, errors and omissions insurance) under this Section, the cost of which shall be reimbursed to SAM by MCO within 30 days of SAM's payment for such insurance.

## ARTICLE 6

### FEES AND PAYMENTS

#### 6.1 MCO Management Base Fee.

a. Beginning on the later of (1) effective date of MCO Medicaid Services under its Section 1115 waiver, currently designated to be January 1, 1997, (2) February 1, 1997, or (3) the first day of the first calendar month following the 60th day after MCO has at least two shareholders (the "Start Date"), MCO will pay SAM a monthly management fee (the "Management Fee") for its Management Services pursuant to this Agreement. The Management Fee, together with the start-up incentive compensation described in Section 6.2.a. and the annual supplemental compensation described in Section 6.2.b. shall be SAM's full compensation for the services rendered by SAM after the Start-Date. SAM shall pay all expenses of its management of MCO pursuant to this Agreement, including but not limited to all costs of equipment, supplies and personnel, except for the costs included in the Start-Up Equipment Budget and the Start-Up Marketing Budget, and the ongoing costs of insurance and marketing, all of which shall be borne by MCO.

b. The Management Fee will be the greater of █% of Total Revenues (as defined below) (the "Percentage Fee"), or \$ █ per month (the "Minimum Fee"). If on the first day of any month MCO enrollment is more than 60,000 members, the Percentage Fee for that month shall be reduced by █% for each 20,000 members in excess of 60,000, up to a maximum reduction of the Percentage Fee of █% (The Management Fee shall not be reduced to an amount less than the Minimum Fee by virtue of such reduction of the Percentage Fee.) The Management Fee will be estimated monthly based on SAM's estimate of the MCO's enrollment and its Total Revenues (defined as the MCO's gross revenues from capitation, reinsurance, third party liability ("TPL"), and interest [exclusive of interest earnings attributable to cash reserves in an amount not to exceed the lesser of MCO's equity or one month's revenue from the operation of MCO], gains and other income) for the month, and will be paid by MCO on the first day of each month. As soon as actual enrollment and Total Revenues are known for the month (typically by the twentieth (20) of the following month), SAM will calculate any necessary adjustment to the month's Management Fee. Any increase or decrease in the Management Fee shall be added to or deducted from, as the case may be, the next month's estimated Management Fee.

6.2 Incentive Compensation; Late Start Penalty. In addition to the payment of the monthly Management Fee by MCO, MCO shall make the following payments of incentive compensation to SAM in the manner prescribed:

a. Start-Up Incentive Compensation. SAM believes with its assistance, MCO will be ready to accept enrollment on the Start Date. For this on-time start-up, SAM shall be entitled to █ dollars (\$ █) incentive compensation if the MCO is ready to accept enrollment on the Start Date; provided however, that if the State of Maryland delays the Start Date to a date after April 1, 1997, such incentive compensation shall be █ dollars (\$ █). Such incentive compensation shall be payable in three equal monthly installments commencing within 30 days after the first day of the month following the first calendar month after the Start Date; provided, however, that if on the date on which any such payment is due, the State of Maryland has suspended MCO's right to enroll patients under the Maryland Contract, MCO shall have no obligation to make such payment or any other remaining payment of such incentive compensation. If MCO is unable to accept enrollment on the Start Date, SAM will not receive any payment of incentive compensation. If MCO is unable to accept enrollment on the first day of the month following the first full calendar month after the Start Date (e.g. on February 1 if the Start Date is January 1), SAM shall pay MCO █ dollars (\$ █) for such delay (the "Liquidated Damages"). Such Liquidated Damages are a reasonable forecast of the damages MCO would incur as a result of such delay. The Liquidated Damages, if any, will be paid by SAM to MCO within 30 days after the first day of the month following the first calendar month after the Start Date.

b. Annual Supplemental Compensation. For operating MCO on an ongoing basis, SAM is eligible for annual supplemental compensation of up to █% of Total Revenue, up to █% of which shall be attributable to profit levels agreed upon by the parties.

Eligibility for supplemental compensation will be contingent upon MCO achieving certain operational and clinical targets as established by the Board of MCO. These targets may include, but are not limited to, the level of enrollment, utilization rates, member satisfaction rates, financial performance compared to budget and quality indicators. These targets will be mutually agreed upon by MCO and SAM prior to the start of each fiscal year as part of the Annual Management Plan. Annual supplemental compensation payments under this Section, if any, are due to SAM from MCO within 60 days of each fiscal year-end.

### 6.3 Marketing Costs.

a. MCO will fund a start-up marketing budget and plan (the "Start-Up Marketing Budget and Plan") in an amount not to exceed \$ [REDACTED]. The Start-Up Marketing Budget and Plan will be prepared by SAM, delivered by SAM to the Board, and subject to the Board's approval, which shall not be unreasonably withheld. MCO, with the agreement of SAM, may elect to provide services, materials and/or equipment that in SAM's estimation is equivalent or comparable to the items designated in the Start-Up Marketing Budget and Plan in lieu of funding. Items listed on the approved Start-Up Marketing Budget and Plan and not directly provided by MCO, may be purchased by SAM and will be paid for by MCO without further authorization by the Board within 30 days following SAM's presentation to MCO of the invoices or receipts therefor. Marketing costs in the Start-Up Marketing Budget and Plan will relate to activities aimed at encouraging and educating targeted Medicaid beneficiaries to become members of MCO. Such activities shall include but not be limited to advertising, printing of brochures, provider directories, pamphlets, placards and flyers, market research, and presentations to prospective members.

b. Beyond the Start-Up Marketing Budget and Plan, all advertising costs and marketing costs of MCO shall be borne by MCO. SAM shall make annual recommendations to MCO for advertising and marketing budgets and plans. SAM shall administer and manage all marketing and advertising expenditures made pursuant to approved budgets and plans without further authorization by the Board.

### 6.4 Fee for Services Prior to Start Date.

a. MCO hereby agrees to pay SAM for Related Services, as well as all other services provided pursuant to this Agreement prior to October 1, 1996 on an hourly basis. \$ [REDACTED]/hour will be paid for Related Services and all other services provided prior to October 1, 1996 by D.F. Schaller, M.D., A.L. Pelberg, M.D., and J.P. Anderson. \$ [REDACTED]/hour will be paid for Related Services and all other services provided prior to October 1, 1996 provided by T.J. Hyland and J. Wilbershild. \$ [REDACTED]/hour will be paid for Related Services and all other services provided prior to October 1, 1996 by the three senior level SAM staff (CEO, CFO and CMO) described in Section 2.2.a. above. \$ [REDACTED]/hour will be paid for Related Services and all other services provided prior to October 1, 1996 by all other SAM professional staff as well as other subcontracted professional staff. SAM will submit monthly invoices to MCO for amounts due under this Section. Payment will be made by MCO to SAM within 20 days of the date of the

invoice. Charges under this provision will likely fluctuate from month to month; however, charges for professional services by SAM and by Pacific Health Care Policy Group (exclusive of reimbursement for reasonable travel and related expenses, support staff and operating expenses at actual cost) will not exceed an aggregate of \$ [REDACTED] for the months of August and September, 1996 without the prior approval of MCO. MCO will also reimburse SAM for all related travel and out-of-pocket expenses.

b. Commencing on October 1, 1996, MCO hereby agrees to pay SAM the sum of \$ [REDACTED] per month for its services to organize and implement MCO prior to the Start Date. If the Start Date is delayed past January 1, 1997, MCO agrees to pay a Minimum Fee of \$ [REDACTED] per month until the Start Date. If the Start Date is delayed past April 1, 1997, SAM agrees to operate the MCO as cost effectively as possible without jeopardizing its ability to accept enrollment on the Start Date, and MCO agrees to reimburse SAM its actual expenses during the period from April 1, 1997, through the Start Date. SAM will submit monthly invoices to MCO for amounts due under this Section. Payment will be made by MCO to SAM within 20 days of the date of the invoice.

## ARTICLE 7

### TERM AND TERMINATION

7.1 Term. This Agreement shall be for an initial term commencing on the date of this Agreement and ending on December 31, 2001 subject to earlier termination as provided in Section 7.2 below. At the end of the initial term, this Agreement shall continue in effect for successive two year terms until terminated in accordance with Section 7.2 below.

#### 7.2 Termination; Payments Upon Termination; Other Effects of Termination.

a. On or after November 1, 1996 and on or before six (6) months following the Start Date, MCO or SAM may terminate this Agreement, effective immediately (the "Section a. Termination Date"), if (A) MCO does not execute the Maryland Contract, (B) the Maryland Contract is canceled by State of Maryland prior to commencement of medicaid managed care operations of MCO on the Start Date, (C) the State of Maryland (if it has the right to approve this Agreement) disapproves this Agreement, (D) the initial capitation rates applicable to MCO for the provision of capitated medical services to Maryland's medicaid population are insufficient to make the operation of MCO economically feasible, such determination to be made by the terminating party in good faith, (E) MCO does not receive enrollment of sufficient covered lives within four (4) months following initial enrollment by the State of Maryland to make the operation of MCO economically feasible, such determination to be made by the terminating party in good faith, or (F) MCO does not have sufficient equity investors to make the operation of MCO economically feasible, such determination to be made by the terminating party in good faith. If this Agreement is terminated pursuant to this Section 7.2a:

(i) MCO will pay SAM for all services provided by SAM up to the Section a. Termination Date pursuant to Section 6.4a as and when provided for in Section 6.4a. In addition, MCO recognizes that SAM's rates for the services provided to MCO during the period prior to the execution of the Maryland Contract have been substantially discounted in reliance on the assumption that the Maryland Contract will be executed and MCO operations will commence. As a result, if this Agreement is terminated pursuant to this Section 7.2a, SAM will be entitled to bill MCO an additional \$75.00/hour for the all services provided by professionals prior to October, 1 1996 and an additional \$50,000 for each month beginning October 1, 1996 through the Section a Termination Date. Such additional payments shall be paid even if the aggregate of \$200,000 for the months of August and September, 1996 described in Section 6.4.a. is exceeded by virtue of the payment. The invoices for the additional billings will be paid within 20 days of the date of invoice.

(ii) MCO shall pay SAM the payments provided for in Section 6.4.b. for each month commencing prior to the Section a. Termination Date.

(iii) MCO will pay all current and pending invoices related to the approved Start-Up Equipment Budget and Start-Up Marketing Budget and Plan.

(iv) SAM shall be reimbursed for all expenses incurred for which reimbursement is required under this Agreement. On the Section a. Termination Date, MCO shall reimburse SAM for all other unfunded property, plant and equipment, including supplies, located within the State of Maryland, for their cost with payment being made on the Section a. Termination Date. MCO shall reimburse SAM all costs associated with SAM's termination of leases of real and personal property (including but not limited to equipment and other leases in lieu of purchases under the Start-Up Equipment Budget) located within the State of Maryland, and the continuing lease payments made by SAM on any such leases that SAM is unable to terminate.

(v) MCO shall return all materials prepared by SAM in connection with the development of MCO, and all related work-product of SAM in whatever form or medium, including all copies thereof. MCO shall not use or permit the use by any person or entity of any information contained in the materials or work-product.

b. Either party may terminate this Agreement for any reason whatsoever if written notice of termination is given by either party not less than 180 days prior to the date (the "Section b. Termination Date") on which the termination is to become effective; provided, however, that no such notice may be given prior to July 1, 2000. If this Agreement is terminated by either party under this Section 7.2b.:

(i) MCO shall pay SAM any and all Management Fees for all months commencing prior to the Section b. Termination Date under Section 6.1 and Section 6.2.

(ii) SAM shall be reimbursed for all expenses incurred for which reimbursement is required under this Agreement. MCO shall reimburse SAM all costs associated

with SAM's termination of leases or real and personal property (including but not limited to equipment and other leases in lieu of purchases under the Start-Up Equipment Budget) located within the State of Maryland, and the continuing lease payments made by SAM on any such leases that SAM is unable to terminate.

(iii) MCO shall pay SAM an intellect transfer fee (the "Intellect Transfer Fee") for MCO's use after termination of the manuals, clinical guidelines, policies and procedures developed during the term of this Agreement in the amount of \$750,000 if the Section b. Termination Date is on or before December 31, 2001, \$500,000 if the Section b. Termination Date is after December 31, 2001 and on or before December 31, 2002, and \$250,000 if the Section b. Termination Date is after December 31, 2002. Payment to SAM of the Intellect Transfer Fee shall not in any way prevent SAM's ongoing use of such managed care materials, provided that SAM shall not use such materials in connection with any managed care program in Maryland. If MCO gives notice of termination to SAM, MCO shall pay the Intellect Transfer Fee to SAM immediately upon notice of termination of this Agreement. If SAM gives notice of termination to MCO, MCO shall pay the Intellect Transfer Fee to SAM within thirty (30) days following notice of termination if MCO desires to retain the manuals, clinical guidelines, policies and procedures developed during the term of this Agreement.

c. If MCO does not receive a new or renewal contract from State of Maryland immediately following the expiration of the initial term of the Maryland Contract, MCO may cancel this Agreement, effective on the date of the expiration of the Maryland Contract (the "Section c. Termination Date"). If this Agreement is terminated pursuant to this Section 7.2c:

(i) MCO shall pay SAM any and all Management Fees for all months commencing prior to the Section c. Termination Date under Sections 6.1 and 6.2.

(ii) SAM shall be reimbursed for all expenses incurred for which reimbursement is required under this Agreement. MCO shall reimburse SAM all costs associated with SAM's termination of leases or real and personal property (including but not limited to equipment and other leases in lieu of purchases under the Start-Up Equipment Budget) located within the State of Maryland, and the continuing lease payments made by SAM on any such leases that SAM is unable to terminate.

(iii) If MCO desires to retain the manuals, clinical guidelines, policies and procedures developed during the term of this Agreement for any reason, including but not limited to for use in making a future application to the State of Maryland, MCO shall pay SAM an Intellect Transfer Fee in the amount of \$500,000, which Intellect Transfer Fee shall be due and payable on the Section c. Termination Date. If MCO pays the Intellect Transfer Fee to SAM, Payment to SAM of the Intellect Transfer Fee shall not in any way prevent SAM's ongoing use of such managed care materials, provided that SAM shall not use such materials in connection with any managed care program in Maryland.

(iv) SAM will negotiate in good faith with MCO, if so requested by MCO, to provide MCO with services following the Section d. Termination Date for processing claims due prior to the Section d. Termination Date, and for any wind-down services needed by MCO. MCO shall pay SAM such compensation as may be agreed to by the parties for such services. Upon the expiration of the wind-down period, all member data, provider contracts and claims records in SAM's possession shall be delivered to MCO for MCO's required retention.

d. Either party may terminate this Agreement immediately upon written notice to the other party following the occurrence of any of the following events by or with respect to the other party:

(i) Cessation of business;

(ii) If either party voluntarily files a petition under any Federal or state statute relating to bankruptcy, insolvency, arrangement or reorganization, or files an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or fails to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of the party, or if the party is adjudged a bankrupt, or if a trustee or receiver is appointed for the party or the party's property, or if any substantial portion of the property becomes subject to the jurisdiction of a bankruptcy court, or if the party makes an assignment for the benefit of the party's creditors, or if there is an attachment, execution or other judicial seizure of any portion of the party's assets and the seizure is not discharged within ten (10) days after its occurrence.

(iii) Commission of fraud or embezzlement as deemed to have occurred as determined by a court of law having legal jurisdiction;

(iv) Failure to correct negligence in the performance of obligations set forth under this Agreement or a material breach of this Agreement within sixty (60) days following receipt of written notice that such negligence or material breach has occurred;

(v) Failure to comply with applicable state licensing requirements within sixty (60) days following receipt of written notice that such failure has occurred.

(vi) Substantial failure of SAM, for two consecutive years, to achieve the MCO targets established by the MCO Board and mutually agreed upon by MCO and SAM pursuant to Section 6.2b. of the Agreement and such failure is due primarily to the actions or inactions of SAM.

If this Agreement is terminated by either party under this Section 7.2d. or under Section 10.9:

(A) MCO shall pay SAM any and all Management Fees for all months commencing prior to the Section d. Termination Date under Section 6.1 and Section 6.2.

(B) If MCO desires to retain the manuals, clinical guidelines, policies and procedures developed during the term of this Agreement for any reason, including but not limited to for use in future operations of MCO, MCO shall pay SAM an Intellect Transfer Fee in the amount of \$500,000, which Intellect Transfer Fee shall be due and payable on the Section d. Termination Date. If MCO pays the Intellect Transfer Fee to SAM, Payment to SAM of the Intellect Transfer Fee shall not in any way prevent SAM's ongoing use of such managed care materials, provided that SAM shall not use such materials in connection with any managed care program in Maryland.

(C) SAM will negotiate in good faith with MCO, if so requested by MCO, to provide MCO with services following the Section d. Termination Date for processing claims due prior to the Section d. Termination Date, and for any wind-down services needed by MCO. MCO shall pay SAM such compensation as may be agreed to by the parties for such services. Upon the expiration of the wind-down period, all member data, provider contracts and claims records in SAM's possession shall be delivered to MCO for MCO's required retention.

(e) Notwithstanding any other provision contained in this Agreement, MCO may terminate this Agreement at any time upon 180 days prior to the date (the "Section e. Termination Date") on which the termination is to be effective. If this Agreement is terminated by MCO pursuant to this Section 7.2.e.:

(i) MCO shall pay SAM any and all Management Fees for all months commencing prior to the Section e. Termination Date under Section 6.1.

(ii) SAM shall be reimbursed for all expenses incurred for which reimbursement is required under this Agreement. MCO shall reimburse SAM all costs associated with SAM's termination of leases or real and personal property (including but not limited to equipment and other leases in lieu of purchases under the Start-Up Equipment Budget) located within the State of Maryland, and the continuing lease payments made by SAM on any such leases that SAM is unable to terminate.

(iii) MCO shall pay SAM an Intellect Transfer Fee in the amount of \$750,000. Payment to SAM of the Intellect Transfer Fee shall not in any way prevent SAM's ongoing use of such managed care materials, provided that SAM shall not use such materials in connection with any managed care program in Maryland. MCO shall pay the Intellect Transfer Fee to SAM immediately upon notice of termination of this Agreement.

(iv) MCO shall pay to SAM a sum equal to the greater of seven hundred fifty thousand dollars (\$750,000) or one-half percent (0.5%) of estimated Total Revenues for the period commencing on the Section e. Termination Date and ending on December 31, 2001. Such estimate shall be based on Total Revenues for the six months prior to the Section e. Termination Date.

## ARTICLE 8

### CONFLICT OF INTEREST; COVENANT NOT TO COMPETE

8.1 Conflict of Interest. MCO acknowledges that in addition to providing services to MCO pursuant to this Agreement, SAM and its affiliates engage in a broad based and diverse medical management and consulting practice, which may from time to time result in SAM's or one or more of its affiliates' being involved in potential and real conflicts of interest with the performance by SAM of its duties pursuant to this Agreement. MCO acknowledges that SAM and its affiliates engage in business relationships outside the State of Maryland with entities against whom MCO may compete. MCO acknowledges these possible potential conflict of interest and waives them on its own behalf and on behalf of the current and future shareholders/member organizations of MCO.

The Board shall take such steps as are necessary on a continuing basis to determine whether any member of the Board or Medical Staff has any direct or indirect financial interest or investment, in any contractor providing goods or services to MCO, and shall disclose any such relationship to SAM in order to enable SAM to discharge its duties under this Agreement effectively and efficiently.

#### 8.2 Covenant Not to Compete.

a. During the term of this Agreement, and for a period of one year following notice of termination of this Agreement (i) by SAM pursuant to Section 7.2.a.(D), 7.2.a.(E), 7.2.a.(F), or 7.2.b., or (ii) by MCO pursuant to Section 7.2.d, neither SAM nor any corporation, partnership or other business entity or person controlling, controlled by or under common control with SAM (each, a "Restricted Party") shall, directly or indirectly, operate, manage, own, control, finance or provide medical management or consulting services for the provision of capitated medical services to Maryland's Medicaid population, or engage in any discussions or negotiations about directly or indirectly operating, managing, owning, controlling, financing, or providing medical management or consulting services for the provision of capitated medical services to Maryland's Medicaid population, without the written consent of MCO.

b. After the Effective Date, neither SAM nor any Restricted Party shall disclose, directly or indirectly, to any person outside of MCO, any shareholder/member organization of MCO, or any attorney, accountant, actuary or other consultant to MCO or SAM (and in the case of such attorney, accountant, actuary or other consultant, such disclosure shall be limited to items reasonably necessary for such person to perform the services for which it was engaged by MCO or SAM) without the express authorization of MCO, any strategies, files and records, any proprietary data relating to MCO or any financial or other information about MCO not then in the public domain.

c. SAM acknowledges that the restrictions contained in this Section 8.2 are reasonable and necessary to protect the legitimate business interests of MCO and that any violation thereof by SAM would result in irreparable harm to MCO. Accordingly, SAM agrees that upon the violation by any of the Restricted Parties of any of the restrictions contained in this Section 8.2, MCO shall be entitled to obtain from any court of competent jurisdiction a preliminary and permanent injunction as well as any other relief provided at law, equity, under this Agreement or otherwise. In the event any of the foregoing restrictions are adjudged unreasonably in any proceeding, then the parties agree that the period of time or the scope of such restrictions (or both) shall be adjusted to such a manner or for such a time (or both) as is adjudged to be reasonable.

## ARTICLE 9

### NOTICES

Any notice or other communication required or permitted by this Agreement shall be in writing and shall be given, and be deemed to have been given, if (a) delivered personally, (b) mailed, postage prepaid, return receipt requested, registered or certified mail, (c) deposited with any nationally-recognized overnight courier service with fees prepaid, for overnight delivery, or (d) sent by machine confirmed facsimile, addressed to the other party at the address set forth below or such other address as the party may designate in writing in a notice duly given pursuant to this Article:

To SAM: Schaller Anderson Maryland, L.L.C.  
c/o Schaller Anderson, Inc.  
3200 North Central Avenue  
Suite 680  
Phoenix, Arizona 85012  
Attention: Joseph P. Anderson

If to MCO: Maryland Care, Inc.  
c/o Maryland General Hospital  
827 Linden Avenue  
Baltimore, Maryland 21201  
Attn: James R. Wood, F.A.C.H.E.

## ARTICLE 10

### MISCELLANEOUS

10.1 Assignment. Neither party shall assign this Agreement to any entity other than an entity that acquires a substantial portion of the assets or stock of the party except with the prior

written consent of the other party, which consent may be withheld by either party in its sole and absolute discretion.

10.2 Guarantee.

a. As a condition precedent to the effectiveness of this Agreement, MCO shall require its existing shareholder(s)/member organization(s) on the date of this Agreement to execute and deliver to SAM a guarantee (the "Guarantee") of the Maximum Guaranteed Obligations (as defined below), which Guarantee shall be in the form attached to this Agreement as Exhibit "A". As a condition precedent to their becoming shareholders/member organizations of MCO, MCO shall require all future shareholders/member organizations of MCO to become guarantors under the Guarantee.

b. In the event this Agreement is terminated, it is recognized that SAM may be requested by MCO to continue MCO operations for a close-out period of up to ninety (90) days (the "Wind-Down Period") following termination of this Agreement. During the Wind-Down Period, SAM will continue to incur costs of operations, including potential severance and other termination costs or penalties. At the same time, MCO may not have sufficient funds to pay SAM for its management services under this Agreement. Each of the MCO shareholders shall severally guarantee, as provided below, the payment of actual expenses incurred by SAM during the Wind-Down Period (which SAM shall use its best efforts to minimize) not to exceed the following amounts (the "Maximum Guaranteed Obligations"):

i.

Average Enrollment Over Final Six Months of Agreement	Maximum Guaranteed Obligations
Less than 30,000	\$2,250,000
30,001 - 60,000	\$3,000,000
60,001 - 90,000	\$3,750,000
90,001 - and above	\$4,500,000

ii. The Maximum Guaranteed Obligations shall be increased by the amount of the Intellect Transfer Fee, if applicable, payable pursuant to the termination provisions of Article 7 of this Agreement. To the extent the Maximum Guaranteed Obligations are not exhausted through reimbursements to SAM during the Wind-Down Period, then any excess may be used to pay any Management Fees in arrears incurred but not paid for services rendered by SAM preceding the Wind-Down Period. Any applicable Intellect Transfer Fee and any Management Fees in arrears incurred but not paid for services rendered prior to the termination of this Agreement shall be included in the Maximum Guaranteed Obligations under all circumstances even if SAM does not provide services to MCO during the Wind-Down Period.

c. Each of the MCO's shareholders shall be severally liable to SAM for its pro rata portion of the Maximum Guaranteed Obligations based on their respective percentage ownership interest in MCO. Notwithstanding the foregoing, if any of the MCO shareholders holds 5% or less of the capital stock of the MCO, each of the other shareholders whose interest in the MCO is greater than 5% shall be liable pro rata for those shareholders holding 5% or less of the capital stock of MCO.

10.3 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns or designees.

10.4 Severability. Should any part of this Agreement be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement.

10.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one agreement.

10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Maryland.

10.7 Entire Agreement. This Agreement and the attached Appendices contain the entire agreement of the parties with respect to the transactions contemplated hereby, and no amendment or modification may be made unless in writing and signed by each of the parties. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the July 25, 1996 Letter Agreement between MCO and Schaller Anderson, Inc., the terms of this Agreement shall govern and supersede the conflicting or inconsistent provisions.

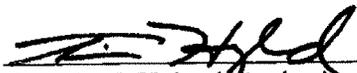
10.8 Time of the Essence. The parties agree that time is of the essence with respect to all provisions of this Agreement.

10.9 Change of Circumstances. If (i) Medicare, Medicaid, any third party payor or any federal, state or local legislative or regulatory authority adopts any law, rule, regulation, policy, procedure or interpretation thereof that establishes a material change in the method or amount of reimbursement or payment for services by MCO, or (ii) any or all such payors/authorities impose requirements that require a material change in the manner of the parties' operations under this Agreement and/or the costs related thereto, then, upon the request of either party materially affected by any such change in circumstances, the parties shall enter into good faith negotiations for the purpose of establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements and change of circumstances while preserving the original intent of this Agreement to the greatest extent possible. In the event the parties cannot agree on such amendment or modification within sixty (60) days, either party shall have the right to terminate this Agreement upon sixty (60) days' prior written notice.

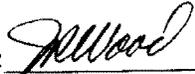
IN WITNESS WHEREOF, the parties have executed this Agreement on the date hereof.

SCHALLER ANDERSON OF MARYLAND,  
L.L.C.

By: Schaller Anderson, Inc., an Arizona  
corporation, its Manager

By:   
Timothy J. Hyland, Authorized Agent

MARYLAND CARE, INC.

By:   
J.R. Wood, ~~President~~ *Chairman*

## APPENDIX

SAM will oversee and manage the following areas of MCO administration (the "Management Services"):

### MEDICAL MANAGEMENT

Quality Management, including provider credentialing and assessing quality of care.

Utilization Management, including development and administration of prior authorization, referrals, case management and utilization review

Prevention and Wellness, including development and administration of EPSDT and perinatal programs

Policy and Procedures, including development and administration of practice parameters, formularies and guidelines specific to the Medicaid populations

### OPERATIONS

Provider Relations and Network Development, including provider contracting and training

Member/Customer Services, handbook, education, surveys and focus groups

Human Relations, including recruiting, hiring, training and retaining a quality work force

Claims and Encounters, including submission to State of Maryland and timely and accurate payments

Grievance, including tracking and resolving member and provider complaints

Marketing, including selection of agency and development of advertising and collateral

### FINANCE

Financial Reporting and Accounting, including monthly internal and regulatory reporting

Financial Planning and Analysis, including budgeting and financial modeling

GUARANTY

DATED: November 29, 1996

EFFECTIVE DATE: September 16, 1996

PARTIES: MARYLAND GENERAL HEALTH SYSTEMS, INC.,  
WASHINGTON COUNTY HOSPITAL ASSOCIATION, INC.,  
and WESTERN MARYLAND HEALTH SYSTEM, INC.,  
together with any other persons or entities hereafter becoming  
parties to this Guaranty (collectively, the "Guarantors"); and

SCHALLER ANDERSON OF MARYLAND, L.L.C., a Maryland  
limited liability company ("SAM").

**RECITALS:**

A. Maryland Care, Inc., a Maryland corporation ("MCO") and SAM are parties to an Amended and Restated MCO Management Services Agreement dated November 29, 1996 (the "Management Services Agreement"), pursuant to which SAM has agreed to perform certain services on behalf of MCO, as more particularly described in the Management Services Agreement. Capitalized terms used and not otherwise defined in this Guaranty shall have the meanings ascribed to them in the Management Services Agreement.

B. The Guarantors own all of the issued and outstanding stock of MCO, and have been and will be substantially benefitted by SAM's execution, delivery and performance of the Management Services Agreement.

C. In order to induce SAM to enter into the Management Services Agreement, which SAM would not do but for the execution, delivery and performance of this Guaranty, the Guarantors have agreed to guarantee the payment to SAM of certain amounts now or hereafter owed by MCO to SAM pursuant to the Management Services Agreement, on the terms and subject to the conditions set forth in this Guaranty.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. The Guarantors guarantee to SAM the payment by MCO of the Maximum Guaranteed Obligations (as that term is defined in Section 10.2.b. of the Management Services Agreement)(such payment obligations are collectively referred to as the "Obligations"), such guaranty being irrespective of any circumstances that might affect the liability of a guarantor or surety. Upon any failure of MCO to pay all or any part of the Obligations to SAM under the Management Services Agreement when and as the same shall become due and payable, the

Guarantors hereby promise to and will, upon receipt of written demand by SAM forthwith pay or cause to be paid to SAM in cash an amount equal to the unpaid amount plus interest at the rate of twelve percent (12%) per annum from and after the date of demand by SAM, and all expenses of collection. Each of the Guarantors shall be severally liable to SAM for its pro rata portion of the Maximum Guaranteed Obligations based on their respective percentage ownership interest in MCO. Notwithstanding the foregoing, if any of the Guarantors holds 5% or less of the capital stock of the MCO, each of the other Guarantors whose interest in the MCO is greater than 5% shall be liable pro rata for those Guarantors holding 5% or less of the capital stock of MCO

2. The obligations of the Guarantors hereunder are independent of the Obligations of MCO, and a separate action or actions may be brought and executed against any one or more of the Guarantors, whether action is brought against one, some or all of the Guarantors, whether action is brought against MCO, or whether MCO is joined in such action or actions.

3. Guarantors expressly waive (i) any notice of the acceptance of this Guaranty; (ii) presentment, notice of dishonor, and protest; (iii) notice of any potential default or default under the Management Services Agreement or any indulgences granted under the Management Services Agreement, (iv) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty or of the Management Services Agreement, and (v) all other notices and demands otherwise required by law which the Guarantors may lawfully waive. No notice or demand on one or more of the Guarantors shall be deemed to be a waiver of the Obligations or of the right of SAM to take further action without notice or demand as provided herein. The obligations of the Guarantors under this Guaranty shall not be affected by: (a) the failure of SAM to assert any claim or demand or to enforce any right or remedy against MCO; (b) any extension or renewal of the Management Services Agreement; or (c) any rescission, waiver, amendment or modification of any of the terms or provisions of this Guaranty, or of the Management Services Agreement. The obligations of any one Guarantor under this Guaranty shall not be affected by the failure of SAM to assert any claim or demand or to enforce any right or remedy against any other Guarantor, the obligations of each Guarantor hereunder expressly being independent of the obligations of each of the other Guarantors. Unless and until all of the Obligations have been paid or performed in full, Guarantors shall not claim or enforce any right of subrogation, reimbursement or indemnity against MCO or any other guarantor of the Obligations or any other right or remedy which might otherwise arise on account of any payments made by any of them or of any other act or thing done by any of them on account of or in accordance with this Guaranty.

4. This Guaranty constitutes a Guaranty of payment and not of collection. The obligations of the Guarantors under this Guaranty shall not be subject to any reduction, limitation, impairment or termination for any reason, including, without limitation, any claim of waiver, relief, surrender, alteration or compromise, and shall not be subject to any defense of set off, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations. Without limiting the generality of the foregoing, the



10. The Guarantors' obligations under this Guaranty inure only to the benefit of SAM and its successors and assigns, and this Guaranty may only be assigned by SAM in connection with an assignment of the Management Services Agreement.

11. This Guaranty shall be governed by and construed in accordance with the internal laws, and not the laws of conflicts, of the State of Maryland.

12. This Guaranty may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together constitute one instrument.

**GUARANTORS:**

MARYLAND GENERAL HEALTH SYSTEMS,  
INC.

By *[Signature]*  
Its President & CEO

WASHINGTON COUNTY HOSPITAL  
ASSOCIATION, INC.

By *[Signature]*  
Its CEO

WESTERN MARYLAND HEALTH SYSTEM,  
INC.

By *[Signature]*  
Its President/CEO

**SAM:**

SCHALLER ANDERSON OF MARYLAND,  
L.L.C.

By: Schaller Anderson, Inc., an Arizona  
corporation, its manager

By *[Signature]*  
Timothy J. Hyland, Authorized Agent

**PLAN MANAGEMENT SERVICES AGREEMENT**

This Plan Management Services Agreement (this "Agreement") is made and entered into as of July 1, 2011 (the "Effective Date of this Agreement"), by and between Maryland Care, Inc. d/b/a Maryland Physicians Care ("Plan") and Schaller Anderson, LLC, an Aetna company ("Schaller") and replaces and supersedes the Amended and Restated MCO Management Services Agreement, effective September 16, 1996.

**RECITALS**

WHEREAS, Plan operates a Medicaid managed care organization under contract with the Maryland Department of Health and Mental Hygiene (the "Agency"); and

WHEREAS, Plan has entered into a contract with the Agency whereby Plan has agreed to provide or arrange for the provision of Covered Services to qualified Enrollees pursuant to the terms and conditions thereof; and

WHEREAS, Plan deems it in the best interest of its continuing operations and the best interests of the communities within which it does business to contract with a third party administrator for professional administrative services for Plan; and

WHEREAS, Schaller, together with its Affiliates, has significant experience in the operation and management of Medicaid and Medicare managed care plans and provider service networks, and has the skills, qualifications, expertise, financial resources and experience necessary to provide certain professional administrative services to Plan; and

WHEREAS, Plan desires to contract with Schaller to provide certain administrative and management services to the Plan.

**AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

Whenever used in this Agreement, the following capitalized terms shall have the meanings set forth after each such term:

1.1 Administrative Services. The administrative services provided by Schaller to Plan specified in Exhibit A to this Agreement.

1.2 Administrative Service Fees. The fees for Administrative Services, as set forth in Exhibit B to this Agreement.

1.3 Affiliate. Affiliate shall mean: (a) all business units and divisions of a party; and (b) any entity controlling, controlled by or under common control with a party, provided such entity shall be deemed to be an affiliate only so long as such control exists. For purposes of this paragraph, "control" means ownership of a majority of the outstanding membership interests or voting securities, or the right to designate a majority of the board of directors or managers, of the applicable entity.

9/7/11  
cc: Finova  
Cynthia Dimarzio

- 1.4 Agency Program. The State Medicaid program, the Primary Adult Care Program (PAC), and any other Agency-sponsored program in which Plan has elected to participate pursuant to the terms and conditions of the Contract.
- 1.5 Agency Program Claims. All claim payments for Covered Services to be paid by Plan in accordance with the terms of the Agency Program.
- 1.6 Agency Program Recipient. Any individual whom the Agency, or the Social Security Administration on behalf of the Agency, determines is eligible, pursuant to federal and State law, to receive medical or allied care, goods or services for which the Agency may make payments under the Medicaid and/or PAC programs, and who is enrolled in the Medicaid and/or PAC program, as applicable.
- 1.7 Agreement Year. Each calendar year, or any portion of the first and last calendar year in which this Agreement is in effect.
- 1.8 Applicable Law. Any and all applicable federal, state or local laws, rules, regulations, guidance, ordinances and requirements, including but not limited to the Contract.
- 1.9 Audit. A final audit prepared by the Auditors.
- 1.10 Auditor. A national independent accounting firm selected by the Plan Board and acceptable to Schaller.
- 1.11 Blended Rate Percentage. Defined in Exhibit B of this Agreement.
- 1.12 Capitation Payment. The capitation payment received by Plan pursuant to the Contract.
- 1.13 Contract. One or more contracts between Plan and Agency, as applicable, and as amended from time to time, pursuant to which Plan has agreed or will agree to provide or arrange for the provision of Covered Services to qualified Enrollees, as it may be amended from time to time.
- 1.14 Covered Services. Those services provided by the Plan in accordance with this Agreement and the Contract.
- 1.15 Delegate. Schaller's designated credentialing agent.
- 1.16 Effective Date of the Contract. The date on which the Contract becomes effective.
- 1.17 Eligible Person. An individual residing in the Service Areas and eligible to enroll in the Agency Program.
- 1.18 Enrollee. An Agency Program Recipient currently enrolled with Plan.
- 1.19 Medicaid. The medical assistance program authorized by Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq., and regulations thereunder, as administered in the State of Maryland by the Agency.
- 1.20 Medicare. The medical assistance program authorized by Title XVIII of the Social Security Act.

- 1.21 Medically Necessary or Medical Necessity. Shall mean that the service or benefit is:
- (a) Directly related to diagnostic, preventive, curative, palliative, rehabilitative, or ameliorative treatment of an illness, injury, disability, or health condition;
  - (b) Consistent with current accepted standards of good medical practice;
  - (c) The most cost efficient service that can be provided without sacrificing effectiveness or access to care; and
  - (d) Not primarily for the convenience of the consumer, the consumer's family, or the provider;

or such other definition set forth in the Code of Maryland Regulations Section 10.09.62.02 B(107) (with respect to the HealthChoice or successor Medicaid program) and Section 10.09.76.01B (21) (with respect to PAC), as they may be amended from time to time.

- 1.22 PAC. The Primary Adult Care Program.
- 1.23 Party. Schaller or Plan, or their respective successors or assigns (and together, the "Parties").
- 1.24 Payment Cap. An amount equal to five (5) million dollars per Agreement Year.
- 1.25 Plan Owner. Any entity that owns or has control over Plan, and its successors and assigns, where "control" means ownership of a majority of the outstanding membership interests or voting securities, or the right to designate a majority of the board of directors or managers, of the applicable entity.
- 1.26 Plan Records. Collectively, all non-public Plan Enrollee records, Plan financial records, Plan corporate records, Plan written procedures, Plan data (including but not limited to current contracting information, eligibility, enrollment, benefits, claims, provider information and medical management information) and other such items relating to the business activities of Plan.
- 1.27 Provider. Any physician, hospital, hospital-based physician, skilled nursing facility, mental health and/or substance abuse professional (which shall include without limitation psychiatrists, psychologists, social workers, psychiatric nurses, counselors, family or other therapists or other mental health/substance abuse professionals), or other individual or entity involved in the delivery of health care services.
- 1.28 Provider Contract. An agreement between Plan and a Provider, under which Provider agrees to provide Covered Services to Enrollees.
- 1.29 Provider Network. All Providers that are party to a Provider Contract.
- 1.30 Service Area. The designated geographical area within which Plan is authorized by the Contract to furnish Covered Services to Enrollees or where Plan plans to seek authorization from the Agency.
- 1.31 State. The State of Maryland.
- 1.32 Term. Defined in Section 8.1 of this Agreement.

1.33 Termination Date. The effective date of the expiration or earlier termination of this Agreement.

1.34 Termination Notice. A notice of termination of this Agreement delivered or received by either Party in accordance with the terms and conditions set forth herein.

1.35 Termination Year. In the event this Agreement terminates by expiration or otherwise on a date other than the last day of an Agreement Year, the time period between the end of the previous Agreement Year and the Termination Date.

1.36 Total Revenue. All plan Capitation Payments and delivery supplemental payments net of premium taxes plus any other supplemental payments made to the Plan in lieu of the Agency, including the supplemental payment in capitation rates.

1.37 Value Based Purchasing Program. The Agency's value based purchasing initiative for Medicaid plans.

## **ARTICLE 2 ENGAGEMENT; DELEGATION OF GENERAL AUTHORITY BY PLAN**

2.1 Engagement; General Authority by Plan. Plan engages and authorizes Schaller to exclusively perform the Administrative Services in support of Plan's implementation and operation of the Agency Program. To the extent otherwise permitted under this Agreement, Schaller may delegate or subcontract any of Schaller's duties and obligations hereunder, provided the subcontract or delegation will include all the applicable requirements of the Contract; and Schaller will be responsible for such duties and obligations as if such duties were performed directly by Schaller, and will use commercially reasonable efforts to ensure that the performance of any such duties and obligations delegated by Schaller to a third party, either by subcontract or otherwise, conform to the standards in this Agreement. Notwithstanding any other provision of this Agreement, the costs of subcontracted payment policy management, configuration, and application services shall be paid by Schaller. Plan and Schaller agree to carry out their obligations under this Agreement in compliance with Applicable Law.

2.2 Control by Plan. Plan shall at all times exercise ultimate control over and authority for the standards, policies and procedures used by Schaller in the provision of the Administrative Services. All standards, policies and procedures developed and maintained by Schaller pursuant to this Agreement are the responsibility of Plan and are subject to the approval of Plan. Subsequently, if Schaller recommends changes to the standards, policies and procedures, Plan may, but shall not be obligated to, adopt as Plan standards, policies and directives the recommendations and/or proposals made to it by Schaller; provided, however, that if Plan does not adopt the recommended standards, policies and directives, or if those that are adopted by Plan result in a conflict of interest or adverse financial impact for Schaller, Schaller shall notify Plan in writing. Within ninety (90) days of Schaller's delivery of such notice, Plan and Schaller will negotiate in good faith to revise the standards, policies and directives in a mutually agreeable manner. Subject to Section 8.3.5 of this Agreement, if the Parties cannot reach agreement within such ninety (90) day period, Schaller may terminate this Agreement immediately upon the expiration thereof and all adverse financial impacts to Schaller related to the action by Plan shall become the responsibility of Plan.

The Parties acknowledge that this Agreement shall not relieve Plan of any responsibility for the performance of duties under the Contract, and Plan shall assure that all tasks related to this agreement are performed in accordance with the terms of the Contract.

2.3 Directives to Schaller; Reliance by Schaller. Schaller shall perform the Administrative Services pursuant to the terms of this Agreement in accordance with the policies and directives of Plan provided to Schaller from time to time. Plan shall communicate all of its approved standards, policies and directives to Schaller and Schaller shall be subject to and responsible for carrying out all such written standards, policies or directives. Schaller shall follow, and shall be entitled to rely on and assume the validity of, all communications from any authorized representative of Plan. Plan shall advise Schaller from time to time of the individuals who are authorized representatives of Plan.

2.4 Independent Contractor. Schaller shall serve as an independent contractor in performing the Administrative Services pursuant to this Agreement, and it is of the essence of this Agreement that Schaller is an independent contractor for all purposes, including tax purposes. Each Party shall have the exclusive right to select, engage, fix the compensation of, discharge and to otherwise manage, supervise and control any persons hired by it, unless otherwise stated herein, and shall be responsible for all obligations and discharge all liabilities imposed under labor, wage and hour, workers' compensation, unemployment compensation or insurance, Social Security and other federal, state and municipal laws and regulations. Notwithstanding any other provision of this paragraph, Plan shall have the right to approve or disapprove the hiring of any person selected by Schaller to serve as Plan Chief Executive Officer, Chief Financial Officer, Chief Medical Officer, Compliance Officer, or Chief Operating Officer, if any. This Agreement does not create a joint venture arrangement. Plan and Schaller are not and will not be deemed to be partners, joint venturers, co-venturers, or employer and employee, and Schaller shall not be liable either primarily or as guarantor for the debts or other obligations of Plan.

2.5 Cooperation. Plan shall cooperate in good faith with Schaller so that Schaller may reasonably perform the Administrative Services. Schaller shall cooperate in good faith with Plan so that Plan may reasonably perform its duties under this Agreement. Specifically, Schaller agrees to (i) permit Plan to monitor the administrative services rendered for the benefit of Enrollees by Schaller, and (ii) participate in Plan's internal and external quality improvement, utilization review, peer review, and grievance procedures.

### ARTICLE 3 ADMINISTRATIVE SERVICES OF SCHALLER

3.1 Administrative Services. Commencing on the Effective Date of this Agreement, Schaller shall perform or provide for the Administrative Services specified in Exhibit A to this Agreement as set forth therein.

3.2 Reports by Schaller. Schaller shall provide to Plan such written reports and clinical information, if any, as are required by the Contract or otherwise reasonably required by Plan in order to permit Plan to comply with its obligations to the Agency. Schaller also agrees to make reasonable efforts to provide ad hoc reports as reasonably requested in writing by Plan. Plan shall pay to Schaller an additional mutually agreed upon administrative fee for such ad hoc reports; provided, however, that Plan shall not pay to Schaller any additional administrative fee for ad hoc reports relating to high cost patients, utilization case management, care management, the assessment of hospital Medicaid services by the Agency, or any reports that both Parties agree are likely to contain information of significant value and importance to Plan and Schaller. The format for such reports shall be mutually agreed to by Plan and Schaller. Notwithstanding any other provision of this section, if the Agency requests additional reports, Schaller shall comply with such request at no additional cost to Plan.

3.3 No Rights in Plan Developed Works. Plan records and other tangible and intangible material of any nature produced by or as a result of any of the Administrative Services and produced exclusively for purposes of meeting the obligations set forth in this Agreement (including, without

limitation, all intellectual property rights relating to the Services and all Plan Records) ("Developed Works") belong exclusively to Plan and are works made for hire; provided however, that Developed Works shall not include prototypic policies, protocols, procedures and other form documents modified for utilization by Plan. If any Developed Works are not considered works made for hire owned by Plan by operation of law, Schaller shall assign the ownership of all intellectual property rights in such works to Plan. Schaller shall deliver to Plan all Developed Works at the termination of the Agreement. All Developed Works in physical form shall be delivered to Plan in such form and all Developed Works in electronic form shall be delivered to Plan in such form; and Schaller shall fully and permanently delete electronic copies of all Developed Works to the extent permitted by Applicable Law and confirm to Plan that such full and permanent deletion has occurred. Developed Works expressly excludes tangible and intangible material of any nature that was not developed solely in connection with this Agreement for Plan's exclusive use.

3.4 Books and Records; Confidentiality. Plan Records and related Enrollee claims data shall be the property of Plan. During the term of this Agreement, Schaller agrees to maintain an adequate record system for recording services, charges, dates and all other commonly accepted information elements for services rendered to Plan under this Agreement, and Schaller shall catalog, store, and maintain such of Plan Records as are necessary to be maintained by Schaller in order to provide the Administrative Services. Furthermore, Schaller shall maintain all Plan Records in strictest confidence and shall not disclose or disseminate any Plan Records to any party (excluding any Schaller Affiliate that directly administers this Agreement) without the prior written consent of Plan or as required by law or court order. Schaller shall deliver to Plan all Plan Records at the termination of the Agreement. All Plan Records in physical form shall be delivered to Plan in such form and all Plan Records in electronic form shall be delivered to Plan in such form; and Schaller shall fully and permanently delete electronic copies of all Plan Records and confirm to Plan that such full and permanent deletion has occurred.

3.5 No Rights in Schaller Proprietary Assets; Confidentiality. This Agreement does not include title to, license grant or copyright release to any proprietary aspect of Schaller's (or any Schaller affiliate's) computer systems or any other proprietary assets of Schaller. Plan is aware that Schaller has license agreements with other companies for the use of certain proprietary computer software programs. Plan shall not request Schaller to violate any aspect of such license agreements. Plan shall not be permitted to make any modification to the proprietary software included in Schaller's (or any Schaller affiliate's) license agreements or other contracts. Upon termination of this Agreement, Plan shall return to Schaller any and all copies of any of Schaller's (and any Schaller Affiliate's) proprietary software computer system design documents, other system documentation, and any other proprietary assets of Schaller (or any Schaller affiliate) in the possession of Plan. During and after the Term of this Agreement, Plan and all Plan Subsidiaries shall maintain the confidentiality of all proprietary assets of Schaller and its affiliates and their respective vendors, except to the extent that disclosure is required by law, including but not limited to state and federal Medicaid laws, in which case Plan shall provide advance written notice to Schaller at its earliest opportunity.

3.6 Books and Records; Governmental Audits and Inspections. Agency shall have access to books and records maintained by Schaller for the purpose of examination, audit, and inspection. Information contained in such books and records is confidential if the disclosure of such information would reveal a trade secret as defined in Applicable Law.

Schaller shall also permit Agency (including, but not limited to, the Medical Program Integrity unit and similar departments of the Agency), and the Department of Health and Human Services ("DHHS"), or their respective designees, to inspect, evaluate and audit any and all books, records, contracts, documents, papers and accounts relating to Schaller's performance of this Agreement and transactions related to the Contract (collectively, "Records"). The right of Agency, or its designee, to

inspect, evaluate and audit Schaller's Records for any particular contract period under the Contract shall exist for a period of ten (10) years from the later to occur of (i) the final date of the contract period for the Contract or (ii) the date of completion of the immediately preceding audit (if any) (the "Audit Period"). Schaller shall keep and maintain accurate and complete Records throughout the term of the Agreement and the Audit Period. Prior approval for the disposition of records must be requested and approved by Plan if the Agreement is continuous. This Agreement shall be retained as part of the official records of both Plan and Schaller for the duration of this Agreement and for ten (10) years thereafter. Schaller shall maintain in its principal administrative office for the duration of this Agreement and for ten (10) years thereafter adequate books and records of all transactions among Schaller, Plan, and members. Such books and records shall be maintained in accordance with prudent standards of insurance recordkeeping. Plan shall retain the right of continuing access to books and records maintained by Schaller sufficient to permit Plan to fulfill all of its contractual obligations to members, subject to any restrictions set forth in this Agreement on the proprietary rights of the Parties in such books and records.

Schaller agrees that the Agency and the DHHS may inspect, evaluate or audit (i) the quality, appropriateness and timeliness of services performed by Schaller pursuant to this Agreement, and (ii) any and all records of the Schaller pertinent to the Contract.

This provision shall survive the termination of this Agreement.

3.7 Fraud and Abuse. Schaller and Plan will cooperate and assist one another, the Agency and any state or federal agency charged with the duty of identifying, investigating, sanctioning or prosecuting suspected fraud, abuse or waste. Schaller will provide originals and/or copies of all records and information requested and allow access to premises and provide records to Agency or its authorized agent(s), the Centers for Medicare and Medicaid Services (CMS), the U.S. Department of Health and Human Services (DHHS), Federal Bureau of Investigation, or other units of federal and state government with jurisdiction over the subject matter herein.

3.8 Confidentiality. Each Party shall maintain the confidentiality of the patient records, charges, managed health care information, utilization, and other confidential information of the other, except to the extent that disclosure is required by law or court order or consented to by the non-disclosing Party. Each Party shall comply with all state and Federal laws and regulations and administrative guidelines issued by Agency or any other state or Federal agency with jurisdiction over the subject matter herein pertaining to the confidentiality, privacy, data security, data accuracy and/or transmission of personal, health, enrollment, financial and consumer information and/or medical records (including prescription records) of Enrollees, including, but not limited, to the Standards for Privacy of Individually Identifiable Information promulgated pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") (42 CFR Parts 160 and 164; 42 CFR 422.504(a)(13)). Each Party agrees to safeguard information about Enrollees according to 42 C.F.R., Part 438.224, and Plan shall document compliance certification (business-to-business) testing of transaction compliance with HIPAA to the extent Schaller receives enrollee data. Concurrently with the execution of this Agreement, Plan and Schaller shall be deemed to have executed and delivered a Business Associate Agreement in accordance with the rules promulgated pursuant to HIPAA, in the form attached hereto as Exhibit C attached hereto and made a part hereof. Plan shall not copy, duplicate, disclose or disseminate any such records supplied by Schaller to any party without the prior written consent of Schaller or as required by law or court order. Upon the termination of this Agreement for any reason, Plan shall return all such Schaller records in its possession to Schaller.

3.9 Supplemental Services. Commencing on the Effective Date of this Agreement, Schaller may perform or provide for the performance of additional services not included in the Administrative Services in connection with the Agency Program for an additional fee supplementary to the

Execution Copy

Administrative Services Fee, subject to the mutual agreement of the Parties. Compensation for these services will be provided in accordance with Section 7.2 of this Agreement.

3.10 Enrollees Not Liable. Schaller agrees that (i) in no event will Plan members or the Agency be held liable for the debts of Schaller, and (ii) in accordance with 42 C.F.R. 447.15, Plan members are not liable to Schaller for any services for which Plan is liable. This provision will survive the termination of this Agreement, including termination due to breach of contract by Plan or due to the insolvency of Plan.

3.11 Initiatives. The Parties shall use commercially reasonable efforts to develop and implement mutually agreeable strategies and programs that implement or otherwise address federal or state health care delivery system reform measures including, for example, the development of health insurance exchanges. The parties acknowledge that such strategies or programs may require amendments or modifications to this Agreement or new agreements.

3.12 Primary Care Enhancement. Schaller acknowledges that Plan is and will be considering ways to enhance its primary care strategy and that such strategy is an important and critical aspect of Plan's business. Accordingly, Schaller shall support Plan's development and participation in such strategies, including among others gainsharing, bundled payments and similar programs and activities.

#### **ARTICLE 4 DUTIES, REPRESENTATIONS, WARRANTIES AND COVENANTS OF PLAN**

Plan shall fulfill the following duties, and makes the following representations and warranties to and covenants with Schaller. Plan acknowledges that Schaller is entering into this Agreement with Plan in material reliance on the accuracy of the following agreements, representations, warranties and covenants:

4.1 Authority: Enforceability. Plan has full power and authority to enter into and perform this Agreement, and each individual signing this Agreement on behalf of Plan has actual authority to do so. This Agreement has been duly authorized, executed, and delivered by Plan and represents the legal, valid, and binding agreement of Plan, enforceable against Plan in accordance with its terms.

4.2 No Conflicts. The execution, delivery, and performance of this Agreement by Plan does not: (a) require the consent, waiver, approval, license, or authorization of any person or public authority which has not been obtained other than the approval of this Agreement by Agency, which approval shall be requested and received by Plan prior to the Effective Date of this Agreement; (b) violate any provision of law applicable to Plan or this Agreement; (c) conflict with or result in a breach of or a default under any agreement or instrument to which Plan is a party or by which it or its assets are bound; (d) create any lien, security interest or other encumbrance upon any of the property or assets of Plan; or (e) violate any judicial or administrative decree, regulation, or any other restriction of any kind or character to which Plan or any of its assets are bound.

4.3 Reimbursements. Plan shall not do anything willful to jeopardize Medicare, Medicaid, or other third-party payor arrangements of Schaller.

4.4 Performance Bond and Capitalization. To the extent that the Contract, Applicable Law or the rules established from time to time by Agency or any other payor or regulatory agency require that there be performance bonds, statutory reserves or other capitalization provided by or with respect to Plan, Plan shall procure and provide the same.

4.5 Government Relations. Plan, Schaller and Schaller Affiliates shall consult and work together with each other with regard to government and regulatory relations with Agency and other government agencies with jurisdiction over the subject matter of this Agreement. Neither Party will knowingly take actions in this regard that are adverse to the other Party.

4.6 No Federal Program Exclusions; No Convictions. To Plan's knowledge, none of its officers and directors nor any Plan employee is excluded from any federal health care program or has been convicted of a crime relating to healthcare as of the Effective Date of this Agreement and during the Term of this Agreement. If Plan becomes aware that Plan, any officer or director or any Plan employee is excluded from a federal health care program or is convicted of a crime relating to healthcare, Plan shall immediately notify Schaller. If such action involved any such Plan employee, Plan shall immediately remove such individual from providing services under this Agreement.

4.7 Delegated Credentialing. Plan shall cause providers to be credentialed/recredentialed by Schaller or Delegate under the terms of this Agreement to either: (i) sign a release and authorization form authorizing Schaller to receive credentials information; or (ii) designate Schaller as an entity authorized to receive credentials information from the Council for Affordable Quality Healthcare (CAQH) database. Plan will monitor and oversee Schaller to provide assurance that all licensed medical professionals are credentialed in accordance with the Agency's credentialing requirements as set forth in the Contract.

## **ARTICLE 5 REPRESENTATIONS, WARRANTIES AND COVENANTS OF SCHALLER**

Schaller makes the following representations and warranties to and covenants with Plan. Schaller acknowledges that Schaller is entering into this Agreement in material reliance on the accuracy of the following representations, warranties and covenants:

5.1 Authority; Enforceability. Schaller has full power and authority to enter into and perform this Agreement, and each individual signing this Agreement on behalf of Schaller has actual authority to do so. This Agreement has been duly authorized, executed, and delivered by Schaller and represents the legal, valid, and binding agreement of Schaller, enforceable against Schaller in accordance with its terms.

5.2 No Conflicts. The execution, delivery and performance of this Agreement by Schaller does not: (a) require the consent, waiver, approval, license or authorization of any person or public authority which has not been obtained; (b) violate any provision of law applicable to Schaller or this Agreement; (c) conflict with or result in a breach of or a default under any agreement or instrument to which Schaller is a party or by which it or its assets are bound; or (d) violate any judicial or administrative decree, regulation, or any other restriction of any kind or character to which Schaller or any of its assets are bound.

5.3 Reimbursements. Schaller shall not do anything willful to jeopardize Medicare, Medicaid, or other third-party payor arrangements of Plan or the Agency Program.

5.4 No Federal Program Exclusion; No Convictions. To Schaller's knowledge, none of its officers and directors nor any Schaller employee, responsible for providing Administrative Services under this Agreement, is excluded from any federal health care program or has been convicted of a crime relating to healthcare as of the Effective Date of this Agreement and during the term of this Agreement. If Schaller becomes aware that Schaller, any officer or director or any Schaller employee, responsible for providing Administrative Services under this Agreement, is excluded from a federal health care program or is convicted of a crime relating to healthcare, Schaller shall immediately notify Plan and the Agency.

If such action involved any such Schaller employee, Schaller shall immediately remove such individual from providing services under this Agreement.

5.5 Participation in Health Insurance Exchange. Schaller will use commercially reasonable best efforts to ensure that any participation in a health insurance exchange by Schaller or any Affiliate of Schaller will not have a detrimental impact on Plan or Plan Owners.

5.6 Competitive Price. Schaller will use commercially reasonable best efforts to offer, or cause any Affiliate of Schaller to offer, Plan Owners a competitive price for all services that Schaller and any Affiliate of Schaller provide, as applicable, in the commercial health insurance market, such as services relating to health insurance exchanges.

## ARTICLE 6 CONTROL BY PLAN

6.1 Ultimate Control. Plan, through its Board of Directors, shall at all times exercise ultimate control over and authority for the Plan's administration of the Agency Program and the standards, policies and procedures used by Schaller in the management of the Plan. The Parties acknowledge that the Board of Directors has the right to reasonably request and receive from Schaller generally accepted industry standard performance reports benchmarked to generally accepted industry standards. Plan shall adopt an effective compliance program. Schaller shall be responsible for implementing and managing the day-to-day operations of the compliance program.

## ARTICLE 7 COMPENSATION

7.1 Administrative Service Fees. Plan shall pay to Schaller the Administrative Service Fees on a monthly basis for each month during the term of this Agreement, as specified in Exhibit B to this Agreement. The Administrative Service Fees shall be billed by Schaller on or about the twenty-fifth (25<sup>th</sup>) day of each month prior to the month for which the Administrative Service Fees apply and include adjustments, if any, related to any prior billing period. Plan agrees to issue payments to Schaller within seven (7) business days following its receipt of Capitation Payments for each applicable month.

7.2 Ancillary Services. Plan shall pay to Schaller the cost of all other administrative services approved in writing by the Parties hereto, as contemplated in Section 3.9 of this Agreement (the "Ancillary Services"). The costs of any Ancillary Services shall be billed with the Administrative Fees and shall be payable by Plan pursuant to Section 7.1 above (the "Ancillary Services Fee").

7.3 Administrative Service Fee Adjustment. In the event that Plan and Schaller agree that a hospital controlled by any Plan Owner directly performs a service, obligation, or duty ("Owner Activity") that would otherwise be the responsibility of Schaller under this Agreement, Plan shall reduce the Administrative Fees by an amount equal to the value of such Owner Activity. The value of such Owner Activity shall be applied monthly in accordance with Section 7.1 of this Agreement using methods mutually agreed upon by the Parties.

7.4 Risk Share. Schaller shall share the risk of the results of operations of the Plan for each Agreement Year as set forth below ("Risk Share"), except for the initial Risk Share period which shall include the full 2011 calendar year.

7.4.1 For each Agreement Year Plan and Schaller shall adopt the Plan's budgeted operating income as a percentage of Total Revenue, excluding the impact of Risk Share, as reflected in

the Plan approved operating budget as the targeted amount of operating income for such year (the "Target Amount"). At the end of each Agreement Year, Schaller shall calculate Plan's operating income as a percentage of Total Revenue, excluding the impact of Risk Share, for the Agreement Year, subject to audit by the Auditors (the "Performance Amount"). If the Performance Amount exceeds the Target Amount by more than █ percent (█%), Plan shall pay Schaller an amount equal to █ percent (█%) of the amount in excess of █ percent (█%) times Total Revenue. If the Performance Amount is below the Target Amount by more than █ percent (█%), Schaller shall pay Plan an amount equal to █ percent (█%) of the amount below █ percent (█%) times Total Revenue. Amounts payable under this section shall be limited to the Payment Cap with respect to the initial Risk Share period and any subsequent single Agreement Year. For purposes of this Section 7.4, Target Amount and Performance Amount shall be adjusted to exclude any material Plan initiatives not included in the Plan's approved operating budget, the effects of Section 7.9, and any other adjustments mutually agreed to by Schaller and Plan.

7.4.2 The Risk Share payments shall include adjustments, if any, related to the Plan's annual audit report with payment to be made no later than July 31 of the calendar year following the Agreement Year with respect to which such payment is due.

7.4.3 In the event this Agreement terminates by expiration or otherwise on a date other than the last day of an Agreement Year, this Section shall apply to the Termination Year, with the Target Amount, Performance Amount and Payment Cap adjusted for the number of months in the Termination Year. Risk Share payments shall be based upon internal financial statements and subject to mutual agreement by the Parties. If agreement cannot be reached, the Plan shall engage an audit of the period, which shall be the basis of the final Risk Share payment. The cost of such audit shall be deducted from any Risk Share payment and, if costs exceed the Risk Share payment, shared by the parties. Risk Share payments shall be made within one hundred and eighty (180) days following the Termination Date.

7.5 Payment Sources. Schaller shall not be financially liable for the payment or reimbursement of Agency Program Claims to Providers under this Agreement excepting in the case that such financial liability to the Agency or Providers exists as a result of the negligence or willful misconduct of Schaller or its employees or agents. Schaller shall be responsible for paying any and all administrative penalties or Value Based Purchasing program disincentives issued by the Agency against the Plan on or after January 1, 2011.

7.6 Deposit Account. Plan shall establish and maintain a segregated, interest-bearing account, and shall cause all expenses of Plan under this Agreement, any other payments or reimbursements to be made to Schaller by Plan under this Agreement, and any interest thereon, to be timely deposited in such account upon Plan's receipt of Capitation Payment as set forth in this Agreement (the "Deposit Account"). Plan shall ensure that any Schaller employees identified to Plan by Schaller in writing are authorized to withdraw funds from the Deposit Account without the consent or approval of Plan.

7.7 Physician Incentive Plans. Plan shall make no specific payment directly or indirectly under a physician incentive plan as an inducement to reduce or limit Medically Necessary services to an Enrollee, and all incentive plans shall not contain provisions which provide incentives, monetary or otherwise, for the withholding of Medically Necessary care. Schaller's compensation under this Agreement is not structured so as to, and shall not be deemed to, provide incentives for Schaller to deny, limit, or discontinue Medically Necessary services to any Enrollee.

7.8 Payments to Schaller. Plan agrees that any payment that it makes to Schaller shall comply with all applicable State and federal laws, rules and regulations, specifically including without limitation applicable provisions of the False Claims Act and Section 6032 of the federal Deficit Reduction

Act of 2005.

7.9 Value Based Purchasing. Plan shall pay Schaller [REDACTED] percent ([REDACTED]%) of any incentive payment it receives from the Agency on or after January 1, 2011 in connection with the Value Based Purchasing Program; however, Schaller shall be solely responsible for any Plan disincentives in connection with the Value Based Purchasing Program incurred on or after January 1, 2011. In the event the Value Based Purchasing Program is eliminated or significantly defunded, the Parties shall enter into good faith negotiations and use commercially reasonable efforts to establish an alternative incentive program that is satisfactory to both Parties. Schaller shall use commercially reasonable efforts to achieve maximum beneficial performance in participating in the Value Based Purchasing Program.

## ARTICLE 8 TERM AND TERMINATION

8.1 Term; Without Cause Termination. The initial term of this Agreement shall begin upon the Effective Date of this Agreement and shall end on December 31, 2016 (the "Initial Term"), subject to earlier termination pursuant to the terms of this Agreement. Unless either Plan or Schaller gives the other Party written notice of termination at least one hundred eighty (180) days prior to the expiration of the Initial Term, this Agreement shall automatically renew for successive five (5) year periods (each, a "Renewal Term" and, collectively with the Initial Term, the "Term"). During any Renewal Term, each Party may terminate this Agreement without cause by submitting at least one hundred eighty (180) days prior written notice to the other Party prior to the end of the second year of such renewal term, and such termination shall become effective at the expiration of the second Agreement Year of the then-current Renewal Term.

### 8.2 Termination for Cause.

8.2.1 Termination for Material Breach. In the event of a Material Breach (as defined below) of this Agreement by either Plan or Schaller (the "Breaching Party"), and Subject to Section 8.3.5 of this Agreement, the other Party (the "Non-breaching Party") may terminate this Agreement upon at least sixty (60) days' prior written notice to the Breaching Party setting forth the reasons for termination. If the Breaching Party cures such Material Breach within sixty (60) days of receipt of such notice to the reasonable satisfaction of the Non-breaching Party, the notice of termination shall be voided and this Agreement shall not terminate. However, cure of a Material Breach by a Breaching Party or waiver by the Non-breaching Party of a Material Breach or series of Material Breaches by the Breaching Party shall not imply waiver by the Non-breaching Party of future Material Breaches by the Breaching Party. For purposes of this Section 8.2, a Material Breach is defined as one or more of the following:

a. Failure to cure any breach or nonperformance, or to correct negligence in the performance of obligations set forth under this Agreement within sixty (60) days following receipt of written notice that such breach, nonperformance or negligence has occurred, unless such breach, nonperformance or negligence is curable, in the reasonable discretion of the Non-breaching Party, but cannot be cured within such sixty (60)-day period, in which case the Breaching Party shall not be deemed to be in Material Breach if it commences a cure within such sixty (60)-day period, and diligently and continuously prosecutes the cure and actually cures the Material Breach within ninety (90) days following notice.

b. Failure to comply with applicable state or federal licensing requirements within a reasonable time (after allowing for any delay caused by any state licensing agency) following receipt of written notice that such failure has occurred.

c. Plan's failure to make any payment required under this Agreement on or before the applicable due date; provided, however, that in the event that Plan's failure to make payment of the Administrative Service Fees or Risk Payments is due to the failure of the Agency to pay the Capitation Payment on a timely basis, the Parties shall work together in good faith to develop a mutually agreeable corrective plan; provided further, that notwithstanding any other provision of this Section 8.2 and subject to Section 8.3.5 of this Agreement, either Party may terminate this Agreement upon written notice to the other if the Parties fail to reach agreement on such a plan after sixty (60) days of Plan's failure to make such payment.

8.2.2 Immediate Termination. Subject to Section 8.3.6 of this Agreement, either Party may immediately terminate this Agreement by notifying the other Party and the Agency, upon the occurrence of any of the following:

- a. Cessation of business; or
- b. If either Party voluntarily files a petition under any Federal or state statute relating to bankruptcy, insolvency, arrangement or reorganization, or files an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or fails to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of such Party, or if a Party is adjudged as bankrupt, or if a trustee or receiver is appointed for it or its property, or if any substantial portion of its property becomes subject to the jurisdiction of a bankruptcy court, or if a Party makes an assignment for the benefit of its creditors, or if there is an attachment, execution or other judicial seizure of any portion of a Party's assets and the seizure is not discharged within ten (10) days after its occurrence; or
- c. Commission of fraud or embezzlement related to this Agreement as deemed to have occurred as determined by a court of law having legal jurisdiction (including but not limited to the offering or giving anything of value to an officer or employee of Agency or the State in violation of state law); or
- d. The termination by Agency of the Contract for any reason; or
- e. Exclusion of either Party from any federal or state health care benefit program;
- f. The inability of the Parties to establish a Provider Network to serve the a Service Area that meets the requirements of the Contract at reimbursement rates consistent with any business plan developed by the Parties for such Service Area.

Notwithstanding any other provisions of this Agreement, Schaller shall not be in Material Breach if it is acting consistent with any directive from, or policies and procedures established by, or approved by, Plan.

8.2.3 Termination Upon Plan Change in Credentialing Policy. Notwithstanding Section 2.2 of this Agreement, Schaller may terminate this Agreement by written notice to Plan at any time following receipt of a Plan Change Notice by Schaller or Delegate. For purposes of this section, a "Plan Change Notice" shall mean a written notice from Plan confirming that Plan has adopted, expects to adopt, or will cause Schaller or Delegate to use, credentialing or peer review standards, policies or procedures under Schaller's contract with Delegate or the Contract that are (i) not required by applicable law or Agency directive, and (ii) inconsistent with the credentialing or peer review standards, policies or procedures used by Delegate to perform Delegate's obligations under its contract with Schaller.

8.3 Effects of Termination or Cessation of Operations.

8.3.1 Orderly Wind-Down. Upon receipt or delivery of a Termination Notice pursuant to the terms hereof that this Agreement shall terminate as of a certain date (the "Termination Date"), Schaller and Plan shall negotiate in good faith to provide for the orderly wind-down of the Administrative Services and/or transition of the Administrative Services to a successor to Plan in compliance with the requirements of Agency and other government agencies. If claims adjudication services are included in the Administrative Services on the date of the Termination Notice, and if so requested by Plan in writing at least sixty (60) days prior to the Termination Date, and if Plan is current on payment of Schaller's monthly management fees and fully funded all paid claims and other funding obligations for incurred but not reimbursed claims, then commencing on the Termination Date and continuing for the period so requested by Plan, but not longer than six months following the Termination Date, Schaller shall continue to perform claims adjudication services, and shall be entitled to the post termination management fees set forth in Exhibit B. Notwithstanding any other provision of this paragraph, following termination of this Agreement and to the extent applicable, Plan shall reimburse Schaller within thirty (30) days after Plan's receipt of invoice therefor from Schaller for the reasonable cost of winding down the Administrative services, the actual costs of severance for Schaller's employees (including any salary continuations and other costs incurred in accordance with Schaller's severance policies), lease termination costs, and claims run out.

8.3.2 Repayment of Outstanding Amounts Following Termination of this Agreement. In the event this Agreement is terminated for any reason, the Plan shall immediately pay for outstanding expenses and medical claims and thereafter to repay to Schaller any outstanding amounts due to Schaller from Plan under this Agreement. The remaining funds, if any, shall be distributed to Plan.

8.3.3 Cessation of Operations; Assumption of Plan Assets. If for any reason Plan terminates this Agreement or ceases operations, Plan shall pay to Schaller, or cause to be paid to Schaller, all outstanding amounts due to Schaller under this Agreement not later than one hundred eighty (180) days following following termination of this Agreement or cessation of Plan operations (the "Payment Date"). Notwithstanding any other provision of this Agreement, Plan shall not create any lien, security interest or other encumbrance upon any of the property or assets of Plan which would impair Plan's ability to repay all outstanding amounts due to Schaller under this Agreement.

8.3.4 Effect of Termination on Hiring Employees. Upon termination of this Agreement for any reason, Plan may offer employment to any individual currently or formerly employed by Schaller, including but not limited to any individual who had responsibilities under this Agreement.

8.3.5 Assignment of URL Domain Name. Schaller shall have all ownership rights and interests in the Plan URL domain name used for the Agency Program, provided that upon termination of this Agreement, any such ownership right or interest shall be automatically assigned to Plan.

8.3.6 Termination of Contract. Each Party, upon submitting or receiving a Termination Notice, shall immediately deliver a copy of such Termination Notice to the Agency. Immediately upon receipt of a Termination Notice from Schaller, Plan shall deliver a notice of termination of the Contract to the Agency, together with any other documentation required to terminate the Contract in accordance with the terms thereof. This Section 8.3.5 shall survive the termination of this Agreement.

8.4 Negotiation; Possible Termination. If a Party determines that (i) any change in law related to healthcare delivery system or payment reform has resulted in or could reasonably be expected to result

in a material impact on the operations of Plan, or (ii) Plan performance is materially below expectations, then such Party may request, upon written notice, that the Agreement be modified in a manner to address such material impact. If ownership of Plan changes, then Plan shall so notify Schaller in writing upon the effectiveness of such change. If Schaller determines that such change in ownership will have a material impact on the Agreement, then Schaller shall have the right to request, upon written notice delivered within thirty (30) days after receipt of such notice from Plan, renegotiation of the Agreement to address the impact of such change in ownership of Plan; provided, however, that Plan shall not be obligated to renegotiate the Agreement unless Schaller provides sufficient information for Plan to reasonably conclude that such change in ownership is likely to result in a material and adverse impact on the benefits Schaller receives under the Agreement. Any negotiations requested under this Section 8.4 shall last no more than six (6) months from the date of the initial notice requesting negotiation and shall be limited to the impact of such noticed event on the terms of the Agreement. During such six (6) month period, the Parties shall work collaboratively and in good faith to evaluate such noticed event and to reach a mutually agreeable approach under the Agreement. If the Parties do not reach agreement on modifications to the Agreement within such time, or do not agree that no such modification is required, then either Party may terminate this Agreement upon written notice to the other Party immediately upon the expiration of such six (6) month period.

## **ARTICLE 9 INDEMNIFICATION; INSURANCE**

### **9.1 Indemnification.**

9.1.1 Schaller shall indemnify and hold harmless Plan, its affiliates and their respective directors, officers, employees and agents for that portion of any loss, liability, damage, expense, settlement, cost or obligation (including reasonable attorneys' fees): (i) which was caused solely and directly by Schaller's willful misconduct, criminal conduct, breach of this Agreement or non performance of its duties under this Agreement, fraud or negligence, related to or arising out of this Agreement; (ii) in connection with the release or transfer of Enrollee-identifiable information to a third party not designated by Plan; (iii) resulting from or arising out of claims, demands or lawsuits brought against Schaller in connection with Administrative Services provided under this Agreement, subject to Section 9.2 of this Agreement.

9.1.2 Plan shall indemnify and hold harmless Schaller, its affiliates and their respective directors, officers, employees and agents for that portion of any loss, liability, damage, expense, settlement, cost or obligation (including reasonable attorney's fees): (i) which was caused solely and directly by Plan's willful misconduct, criminal conduct, breach of this Agreement or non performance of its duties under this Agreement, fraud or negligence, related to or arising out of this Agreement; (ii) resulting from taxes, assessments and penalties incurred by Schaller by reason of Agency Program Claim Costs made or Administrative Services performed hereunder, and any interest thereon, provided that Plan shall not be required to pay any net amount, franchise or other tax, however designated, based upon or measured by Schaller's net amount, receipts, capital or net worth; (iii) in connection with the release or transfer of Enrollee-identifiable information to Customer or a third party designated by Plan, or the use or further disclosure of such information by Plan or such third party; (iv) resulting from the inclusion of third party vendor information on identification cards; or (v) resulting from or arising out of claims, demands or lawsuits brought against Schaller in connection with Administrative Services provided under this Agreement.

9.1.3 The Party seeking indemnification under Section 9.1.1 or Section 9.1.2 above must notify the indemnifying Party within thirty (30) days in writing of any actual or threatened action, suit or proceeding to which it claims such indemnification applies. Failure to so notify the indemnifying

Party shall not be deemed a waiver of the right to seek indemnification, unless the actions of the indemnifying Party have been prejudiced by the failure of the other Party to provide notice within the required time period.

The indemnifying Party may then take steps to be joined as a Party to such proceeding, and the Party seeking indemnification shall not oppose any such joinder. Whether or not such joinder takes place, the indemnifying Party shall provide the defense with respect to claims to which this Section applies and in doing so shall have the right to control the defense and settlement with respect to such claims.

The Party seeking indemnification may assume responsibility for the direction of its own defense at any time, including but not limited to the right to settle or compromise any claim against it without the consent of the indemnifying Party, provided that in doing so it shall be deemed to have waived its right to indemnification except in cases where the indemnifying Party has declined to defend against the claim.

9.1.4 Plan and Schaller agree that Schaller does not render medical services or treatments to Enrollees; and health care providers are not the agents or employees of Plan or Schaller.

9.1.5 The indemnification obligations under Section 9.1.1 above shall not apply to that portion of any loss, liability, damage, expense, settlement, cost or obligation caused by Schaller's act or omission undertaken at the direction of Plan (other than the Administrative Services described herein), and the indemnification obligations under Section 9.1.2 above shall not apply to that portion of any loss, liability, damage, expense, settlement, cost or obligation caused by Plan's act or omission undertaken at the direction of Schaller.

9.1.6 The indemnification obligations under this Section 9.1 shall terminate upon the expiration of this Agreement, except as to any matter concerning which a claim has been asserted by notice to the other Party at the time of such expiration or within two (2) years thereafter.

9.2 Defense of Claim Litigation. In the event of a legal, administrative or other action arising out of the administration, processing or determination of a claim for Covered Services, Schaller shall undertake the defense of such action at Schaller's expense and settle such action when in its reasonable judgment it appears expedient to do so. If Plan is also named as a party to such action, Schaller will defend Plan, provided that the action relates solely and directly to actions or failure to act by Schaller and there is no conflict interest between Schaller and Plan. Plan agrees to pay the amount of Covered Services included in any judgment or settlement in an action described in this Section, but shall not be liable for any other part of such judgment or settlement, including but not limited to legal expenses and punitive damages, except to the extent provided in Section 9.1.2 above.

9.3 Remedies. Neither Party shall be liable to the other for any consequential, incidental or punitive damages whatsoever.

9.4 Insurance. During the term of this Agreement and any continuation of services obligation hereunder, each Party shall, at its own expense, maintain the following minimum insurance coverages, subject to annual review and adjustment by Plan in accordance with Section 12.6, or such higher amounts that may be required under Applicable Law:

- 9.4.1. Commercial General Liability:
  - \$ 2 million Products/Completed Operations Aggregate
  - \$ 2 million General Aggregate
  - \$ 1 million Any One Occurrence

\$ 1 million Any One Person or Organization

9.4.2 Excess Liability

\$ 5 million Products/Completed Operations Aggregate  
\$ 5 million General Aggregate  
\$ 5 million Any One Occurrence  
\$ 5 million Any One Person or Organization

9.4.3 Managed Care Errors & Omissions Insurance:

\$ 5 million Per Occurrence for each coverage  
\$ 5 million Annual Aggregate for each coverage

9.4.4 Workers' Compensation. Workers' Compensation insurance for all of such Party's employees connected with the work under this Agreement (unless, in the case of Schaller employees, such employees are covered by the protection afforded by Plan), sufficient to meet statutory liability limits in the state(s) wherein the work is to be performed and employer's liability insurance with minimum limits of \$100,000 each accident for bodily injury by accident, \$100,000 each employee for bodily injury by disease, and a policy limit of \$500,000. Such insurance shall comply with the State's Worker's Compensation Law.

If coverage is on a "claims made" basis, upon termination of this Agreement, or if a Party changes insurance carriers during the term of this Agreement, the Party shall maintain or obtain prior acts coverage or purchase optional extended reporting period (e.g. "tail") coverage to ensure that coverage in the required amount is maintained for claims made at any time related to an occurrence during the term of this Agreement.

Plan will name Schaller as an Additional Insured on the Commercial General Liability coverage. Plan shall furnish Schaller with Certificates of Insurance, which certify that the Party has the required insurance coverage and additional insured endorsements. Plan's insurance coverage may be written through a Schaller-approved self-insurance program. All Certificates of Insurance will include a provision to provide the Certificate Holder with 30 days notice of cancellation or any material reductions in coverage.

**ARTICLE 10  
NOTICES**

Any notice or other communication required or permitted by this Agreement shall be in writing and shall be given, and be deemed to have been received, if (a) delivered personally, (b) mailed, postage prepaid, return receipt requested, registered or certified mail, (c) deposited with any nationally-recognized overnight courier service with fees prepaid, for overnight delivery, or (d) sent by machine confirmed facsimile followed by originals delivered or sent in accordance with (a), (b) or (c), above, within three (3) days of facsimile transmission, addressed to a Party at the address set forth below or such other address as the Party may designate in writing in a notice duly given pursuant to this Article:

If to Schaller: Schaller Anderson, LLC  
Attention: Legal Department  
4645 E. Cotton Center Blvd., Building 1  
Phoenix, Arizona 85040  
Facsimile: (602) 431-7463

Execution Copy

If to Plan: Maryland Physicians Care, MCO  
509 Progress Drive, Suite 117  
Linthicum, MD 21090-2256  
Attention: Cynthia Demarest  
Facsimile: 860-907-2752

and

Raymond A Grahe, Chairman  
Senior Vice President  
Meritus Health  
11116 Medical Campus Drive  
Hagerstown, Maryland 21742

and

Barry Ronan, Vice Chairman  
President and CEO  
Western Maryland Health System  
12501 Willowbrook Rd SE  
P O Box 539  
Cumberland, Maryland 21502

with a copy to: Epstein Becker & Green, P.C.  
1227 25<sup>th</sup> Street, NW, Suite 700  
Washington, DC 20037  
Attention: Dale Van Demark

A Party may also provide a courtesy copy of a notice by electronic mail, but any such courtesy copy will not constitute effective notice under this Agreement.

## ARTICLE 11 DISPUTE RESOLUTION

11.1 Process. Any dispute between the Parties or claim of breach by one Party with respect to this Agreement shall be resolved in accordance with the provisions of this Article 11.

11.2 Mediation. If a Party believes that the other Party has failed to fulfill any obligation hereunder, then such Party shall promptly notify the other Party in writing of the substance of its belief. The Party receiving such notice shall have ten (10) business days within which to respond to such notice, and such response shall be in writing and shall either identify such Party's effort to remedy such failure or explain why such Party does not believe such failure exists. If upon receipt of such response notice the claiming Party continues to believe that the other Party has failed to fulfill an obligation and has failed to take appropriate steps to remedy such failure, then such Party shall require, through written notice to the other Party, mediation of such dispute. Upon such mediation notice, the Parties shall mutually agree on the identification and selection of an independent mediator ("Mediator") who will facilitate discussions between the parties for the purpose of resolving such dispute. Each Party shall identify a team consisting of no more than two (2) individuals to participate in such discussions. The Parties shall participate in a minimum of three (3) meetings with the Mediator, each to be held no later than thirty (30) days after

selection of the Mediator; provided, however, that no such meeting(s) shall be held in the event that the Parties have resolved such dispute. The Parties shall each pay an equal share of the Mediator's fee for services performed under this paragraph. All rules relating to the mediation process not explicitly addressed in this Section 11.1 shall be determined by the Mediator.

11.3 Litigation. If any dispute, controversy or claim arises between the Parties and is not resolved in accordance with Section 11.2, then either Party shall have the right to seek resolution through application to any state or Federal court within the State of Maryland.

## **ARTICLE 12 MISCELLANEOUS**

12.1 Assignment. A Party shall not assign this Agreement to any entity, other than an entity that acquires all or substantially all of the assets or stock of the Party or to a successor by merger, except with the prior written consent of the other Party, which consent may not be unreasonably withheld.

12.2 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

12.3 Severability. Should any part of this Agreement be deemed invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement. All such terms or provisions which are determined by a court of competent jurisdiction to be invalid, void or illegal shall be construed and limited so as to allow the maximum effect permissible by law.

12.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one agreement.

12.5 Governing Law. This Agreement shall be governed by and construed in accordance with State laws.

12.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the transactions contemplated hereby, and supersedes any oral or written proposals, statements, discussions, negotiations or other agreements before or contemporaneous with this Agreement, other than the agreements and documents executed concurrently with the execution of this Agreement. The parties agree that the Amended and Restated MCO Management Services Agreement effective September 16, 1996, between Schaller and the Plan, is hereby terminated as of the Effective Date of this Agreement. The Parties acknowledge that they have not been induced to enter into this Agreement by any oral or written representations or statement not expressly contained in this Agreement. No amendment or modification may be made unless in writing and signed by each of the Parties, with specific reference to the fact that the writing amends or modifies this Agreement.

12.7 Time of the Essence; Computation of Time. The Parties agree that time is of the essence with respect to all provisions of this Agreement. In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day thereafter which is not a Saturday, Sunday, or legal holiday.

12.8 Change in Circumstances. If (a) Medicaid, Medicare any third party payor or any federal, state or local legislative or regulatory authority adopts any law, rule, regulation, policy, procedure or

interpretation thereof that establishes a material change in the method or amount of reimbursement or payment for services, or (b) any or all such payors/authorities impose requirements that require a material change in the manner of Schaller's operations under this Agreement and/or the costs related thereto, then, upon Schaller's request, Plan and Schaller shall enter into good faith negotiations for the purpose of establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements and change of circumstances while preserving the original intent of this Agreement to the greatest extent possible.

12.9 Survivability. Subsequent to the termination of this Agreement, Plan, its affiliates, and their respective successors and assigns (whether by deliberate act or operation of law) shall continue to be jointly and severally obligated to pay Schaller any unpaid amounts due Schaller during the term of this Agreement. Plan and Schaller shall remain obligated beyond termination of this Agreement to obtain adequate "tail" insurance as required by Sections 9.4 and 9.5. In addition, the indemnification provisions delineated in Article 9 shall continue in force beyond termination of this Agreement. Additionally, Schaller shall perform all obligations required under this Agreement relating to time periods during the term of this Agreement, including the preparation and delivery of reports after the Termination Date relating to such time periods.

12.10 Construction. Any reference in this Agreement to an "Article" or a "Section" shall be to a provision of this Agreement, unless specifically provided otherwise. Any provisions of this Agreement which directly conflict with the terms and provisions of the Contract will be deemed waived, unless such conflict may be resolved through construction or amendment as provided herein, and the provisions set forth in the Contract shall control. All other terms and provisions of the Agreement not affected hereby shall remain in full force and effect.

12.11 Third Party Beneficiaries. This Agreement is expressly entered into only by and between the Parties signatory hereto and is only for their benefit. There is no intent by either Party to create or establish third party beneficiary status rights or their equivalent in any other reference individual, subcontractor or third party, including but not limited to any Provider, Eligible Person, Enrollees, or the employees or independent contractors of such parties or of either Party to this Agreement, and no such third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement. Notwithstanding the foregoing, Plan Owners shall be deemed third party beneficiaries for purposes of Sections 5.5 and 5.6 of this Agreement.

12.12 Regulatory Approval. The terms and conditions of the Agreement are subject to the due satisfaction of all State and Federal regulations and the approval of the Contract by Agency and other state agencies.

12.13 Titles and Captions. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor effect the interpretation of this Agreement.

12.14 Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

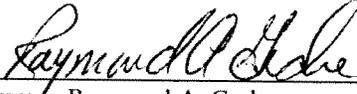
12.15 Presumption. Neither this Agreement nor any section thereof shall be construed against any Party solely due to the fact that this Agreement or any section thereof was drafted by that Party.

12.16 Further Action. The Parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate, subject to Applicable Law, to achieve the purposes of this Agreement.

Execution Copy

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the Effective Date of this Agreement.

MARYLAND CARE, INC. d/b/a MARYLAND PHYSICIANS CARE

By:   
Printed Name: Raymond A. Grahe  
Title: Chairman  
Date: 8/27/2011

SCHALLER ANDERSON, LLC

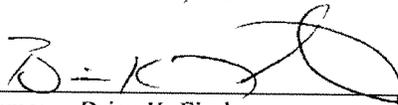
By:   
Printed Name: Brian K. Fischer  
Title: Treasurer & Chief Financial Officer  
Date: 8-19-11

Exhibit A  
ADMINISTRATIVE SERVICES

Schaller shall provide or arrange for the provision of the following Administrative Services pursuant to Plan's standards, policies and procedures, and in accordance with the requirements of applicable state and Federal laws and regulations including, but not limited to, the Contract.

1. Management of Plan; Development and Operation of Medicaid Managed Care Organization. Schaller shall (i) manage the day-to-day operations of the Plan; and (ii) develop and operate, on behalf of Plan, a Medicaid managed care organization.

Medicaid Application. Schaller shall be responsible for the development of the Medicaid application that will be submitted to the Agency and any other applicable governmental agencies.

Business Planning. Schaller shall provide business planning services for the Plan including the development of a consolidated business plan approved by Plan and Schaller; Schaller shall be responsible for the implementation of the Business Plan.

Plan and Administrative and Management Services. Schaller shall be responsible for providing such services as may be required to meet the requirements of the Contract and any other applicable statutory or regulatory requirements. Such administrative services shall include, but are not strictly limited to:

- Enrollment and eligibility;
- Marketing planning and materials approved by the marketing committee of the Plan's Board of Directors; provided, however, the parties agree that Schaller shall not be responsible for marketing costs for Agency Program materials in excess of \$650,000 annually;
- Enrollee services;
- Provider contracting and credentialing;
- Provider services;
- Recommend Health Plan policies and procedures;
- Quality improvement programs;
- Disease management programs;
- Utilization management;
- Grievance system (member and provider);
- Claims processing;
- Fraud monitoring and prevention;
- Business and health information systems;
- Financial accounting and reporting;
- Financial and utilization analysis and reporting;
- Financial and business planning; and
- Electronic connectivity
- Care management

Plan Administrative and Management Personnel. Schaller shall provide adequate personnel, including a dedicated staff residing in the State to perform applicable Administrative Services. Schaller shall be responsible for the acts and omissions of its employees, agents and contractors. Plan shall have the right to approve the Plan Chief Executive Officer, Chief Financial Officer, Chief Medical Officer, Compliance Officer and the Chief Operating Officer provided such approval shall not be unreasonably withheld or delayed.

[Remainder of page intentionally left blank.]

Exhibit B  
ADMINISTRATIVE SERVICE FEES

1. Administrative Service Fees for Agency Programs Other than PAC. Plan shall pay Schaller a monthly management fee that shall be equal to that portion of the Total Revenue that is not attributable to PAC Enrollees times the Blended Rate Percentage. PAC Enrollees shall not be counted for purposes of determining such monthly management fee. The Blended Rate Percentage shall be equal to:



2. PAC Administrative Service Fee. Plan shall pay Schaller a monthly management fee for Plan members enrolled in PAC ("PAC Management Fee") that shall equal [REDACTED] percent ([REDACTED]%) of that portion of the Total Revenue that is attributable to PAC Enrollees.
3. Post Termination Fee. For six (6) months following the Termination Date, Plan shall pay Schaller [REDACTED] Dollars ([REDACTED]) per month to process run out claims for all claims Schaller has received for service periods on or before the Termination Date, together with any wind-down fees described in Section 8.3.1 of this Agreement, and other fees, if any, mutually agreed to by the parties. Schaller shall have no obligation to process claims after the expiration of such six (6) month period.

[Remainder of page intentionally left blank.]

Exhibit C  
HIPAA BUSINESS ASSOCIATE AGREEMENT

Health Insurance Portability and Accountability Act (HIPAA)

**THIS APPENDIX** (the "Appendix") between Plan and Schaller is an attachment to the Plan Management Services Agreement between Schaller and Plan (the "Agreement") and is incorporated by reference therein.

In conformity with the regulations at 45 C.F.R. Parts 160-164 (the "Privacy and Security Rules") Schaller will under the following conditions and provisions have access to, maintain, transmit, create and/or receive certain Protected Health Information:

1. Definitions. The following terms shall have the meaning set forth below:

C.F.R.. "C.F.R." means the Code of Federal Regulations.

Designated Record Set. "Designated Record Set" has the meaning assigned to such term in 45 C.F.R. 164.501.

Electronic Protected Health Information. "Electronic Protected Health Information" means information that comes within paragraphs 1(i) or 1(ii) of the definition of "Protected Health Information", as defined in 45 C.F.R. 160.103.

Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as personal representative in accordance with 45 C.F.R. 164.502 (g).

Protected Health Information. "Protected Health Information" shall have the same meaning as the term "Protected Health Information", as defined by 45 C.F.R. 160.103, limited to the information created or received by Schaller from or on behalf of Plan.

Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. 164.501.

Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Security Incident. "Security Incident" has the meaning assigned to such term in 45 C.F.R. 164.304.

Standard Transactions. "Standard Transactions" means the electronic health care transactions for which HIPAA standards have been established, as set forth in 45 C.F.R., Parts 160-162.

2. Obligations and Activities of Schaller

(a) Schaller agrees to not use or disclose Protected Health Information other than as permitted or required by this Appendix or as Required By Law.

(b) Schaller agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Appendix.

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(c) Schaller agrees to mitigate, to the extent practicable, any harmful effect that is known to Schaller of a use or disclosure of Protected Health Information by Schaller in violation of the requirements of this Appendix.

(d) Schaller agrees to report to Plan any Security Incident or any use or disclosure of the Protected Health Information not allowed by this Appendix of which it becomes aware within seven (7) business days of becoming aware of the Security Incident. For purposes of the Security Incident reporting requirement, the term "Security Incident" shall not include inconsequential incidents that occur on a daily basis, such as scans, "pings" or other unsuccessful attempts to penetrate computer networks or servers containing electronic PHI maintained by Schaller.

(e) Schaller agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Schaller on behalf of Plan agrees to the same restrictions and conditions that apply through this Appendix to Schaller with respect to such information.

(f) Schaller agrees to provide access, at the request of Plan, and in the time and manner designated by Plan, to Protected Health Information in a Designated Record Set, to Plan or, as directed by Plan, to an Individual in order to meet the requirements under 45 C.F.R. 164.524.

(g) Schaller agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Plan directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of Plan or an Individual, and in the time and manner designated by Plan.

(h) Schaller agrees to make (i) internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Schaller on behalf of, Plan, and (ii) policies, procedures, and documentation relating to the safeguarding of Electronic Protected Health Information available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Plan's compliance with the Privacy and Security Rules.

(i) Schaller agrees to document such disclosures of Protected Health Information as would be required for Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

(j) Schaller agrees to provide to Plan the information collected in accordance with this Section to permit Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

(k) With respect to Electronic Protected Health Information, Schaller shall 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 Plan, as required by 45 C.F.R. Part 164, Subpart C.

(l) With respect to Electronic Protected Health Information, Schaller shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it.

(m) If Schaller conducts any Standard Transactions on behalf of Plan, Schaller shall comply with the applicable requirements of 45 C.F.R. Parts 160-162.

3. Permitted Uses and Disclosures by Schaller

3.1 General Use and Disclosure

Except as otherwise provided in this Appendix, Schaller and Schaller Affiliates may use or disclose Protected Health Information to perform its obligations under the Agreement, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Customer or the minimum necessary policies and procedures of Customer.

3.2 Specific Use and Disclosure Provisions

(a) Except as otherwise provided in this Appendix, Schaller may use Protected Health Information for the proper management and administration of Schaller or to carry out the legal responsibilities of Schaller.

(b) Except as otherwise provided in this Appendix, Schaller may disclose Protected Health Information for the proper management and administration of Schaller, provided that disclosures are Required By Law, or Schaller 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 Schaller of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise provided in this Appendix, Schaller and Schaller Affiliates may use Protected Health Information to provide data aggregation services to Customer as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

(d) Schaller may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

4. Obligations of Plan,

4.1 Provisions for Plan to Inform Schaller of Privacy Practices and Restrictions

(a) Plan shall notify Schaller of any limitation(s) in its notice of privacy practices of Plan in accordance with 45 C.F.R. § 164.520, to the extent that such limitation(s) may affect Schaller's use or disclosure of Protected Health Information.

(b) Plan shall provide Schaller with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes affect Schaller's uses or disclosures of Protected Health Information.

(c) Plan agrees that it will not furnish or impose by arrangements with third parties or other Covered Entities or Business Associates special limits or restrictions to the uses and disclosures of its PHI that may impact in any manner the use and disclosure of PHI by Schaller under the Agreement and this Appendix, including, but not limited to, restrictions on the use and/or disclosure of PHI as provided for in 45 C.F.R. 164.522.

4.2 Permissible Requests by Plan

Plan shall not request Schaller to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rules if done by Plan.

4.3. Term and Termination. Subject to Section 8.3.6 of the Agreement:

(a) Term. The provisions of this Appendix shall take effect on the Agreement Effective Date (except for the provisions pertaining to the safeguarding of Electronic Protected Health Information, which provisions shall take effect as of February 10, 2009), and shall terminate when protections are extended to such information, in accordance with Section 8(c) of this Appendix.

(b) Termination for Cause. Without limiting the termination rights of the Parties pursuant to the Agreement and upon Plan's knowledge of a material breach by Schaller, Plan shall either:

i. Provide an opportunity for Schaller to cure the breach or end the violation, or terminate the Agreement, if Schaller does not cure the breach or end the violation within the time specified by Plan,

ii. Immediately terminate the Agreement, if cure of such breach is not possible;

iii. If neither termination nor cure are feasible, Plan shall report the violation to the Secretary.

(c) Effect of Termination. The Parties mutually agree that it is essential for Protected Health Information to be maintained after the expiration of the Agreement for regulatory and other business reasons. The Parties further agree that it would be infeasible for Plan to maintain such records because Plan lacks the necessary system and expertise. Accordingly, Plan hereby appoints Schaller as its custodian for the safe keeping of any record containing Protected Health Information that Schaller may determine it is appropriate to retain. Notwithstanding the expiration of the Agreement, Schaller shall extend the protections of this Appendix to such Protected Health Information, and limit further use or disclosure of the Protected Health Information to those purposes that make the return or destruction of the Protected Health Information infeasible.

5. Miscellaneous

(a) Regulatory References. A reference in this Appendix to a section in the Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, the safeguarding of Electronic Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either Party may, by written notice to the other Party, amend the Agreement and this Appendix in such manner as such Party determines necessary to comply with such law or regulation. If the other Party disagrees with such amendment, it shall so notify the first Party in writing within thirty (30) days of the notice. Subject to Section 8.3.6 of the Agreement, if the Parties are unable to agree on an amendment within thirty (30) days thereafter, then either of the Parties may terminate the Agreement on thirty (30) days written notice to the other Party.

(c) Survival. The respective rights and obligations of Schaller under Section 8(c) of this Appendix shall survive the termination of this Appendix.

(d) Interpretation. Any ambiguity in this Appendix shall be resolved in favor of a meaning that permits Plan to comply with the Privacy and Security Rules.

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(e) No third party beneficiary. Nothing express or implied in this Appendix or in the Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

(f) Governing Law. This Appendix shall be governed by and construed in accordance with the same internal laws as that of the Agreement

The Parties hereto have executed this Appendix with the execution of the Agreement.

[Remainder of page intentionally left blank.]

FIRST AMENDMENT TO THE  
AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT

THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT ("Agreement") dated November 29, 1996, by and between Maryland Care, Inc. (the "MCO"), and Schaller Anderson of Maryland, L.L.C., a Maryland limited liability company ("SAM") is hereby amended by this FIRST AMENDMENT TO THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT (the "First Amendment").

WHEREAS, MCO and SAM desire to amend the Agreement to modify the terms and conditions of the Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, MCO and SAM hereby amend the Agreement as follows:

1. The following sentence is added to the end of Section 2.2a of the Agreement: "In the event that SAM or SAM's owners expect to re-deploy MCO's CEO, CMO, CFO and/or COO (if any) for more than 20 work days per twelve-month period, SAM shall notify MCO's Chairman of the redeployment and the planned coverage."
2. Section 3.6b of the Agreement is hereby deleted and replaced in its entirety with the words "(b) on the Termination Date, MCO has paid SAM \$50,000 per person for each of the CEO, CFO, CMO and/or COO (if any) hired by MCO or its successor, affiliate or stockholder as reimbursement of SAM's estimated recruiting costs."
3. The following paragraph is added as Section 5.5 of the Agreement: "Notwithstanding any other provision of this Agreement, except in the case of gross negligence or willful misconduct, neither MCO nor SAM shall be liable to the other for any special, punitive, or exemplary damages, including without limitation, loss or damage to data, down time costs, cost of capital, loss of interest, or revenue, or loss of anticipated profits, other than those revenue or profits directly related to an indemnified claim, and then only to the extent such losses are proven by the indemnitee. The parties agree that the foregoing does not prevent the recovery of losses, claims, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses related to the defense of any claims) that are foreseeable and directly related to the conduct of either party under this Agreement."
4. In Section 6.1b of the Agreement, the number "60,000" is hereby deleted and replaced in two places by the number "20,000"; the number "██████" is hereby deleted and replaced by the number "██████"; and the words "Percentage Fee of ██████%" are hereby deleted and replaced with the words "Percentage Fee of ██████%"
5. The following sentences are added to the end of Section 6.2b of the Agreement: "However, if MCO and SAM cannot reach mutual agreement on the profit, operational and clinical targets by May 15<sup>th</sup> after the beginning of the applicable fiscal year, the targets and their respective base performance benchmark and incentive performance benchmarks will be based upon the default process delineated in Attachment I hereto this Agreement. Due to the change in MCO's fiscal year to a calendar year, the percentage of Total Revenue earned hereunder this Section for the year ended June 30, 2000, based on SAM's performance during the year ended June 30, 2000, will be applied to Total Revenue for the

eighteen (18) month period ending December 31, 2000, and paid on or before March 1, 2001. For calendar years commencing on January 1, 2001 and thereafter, annual supplemental compensation payments hereunder this Section, if any, are due to SAM within 60 days of each fiscal (i.e. calendar) year-end."

6. The following sentences are added to the end of Section 6.3b of the Agreement: "Beginning on January 1, 2001 and until the Termination Date of this Agreement, SAM, at its expense, shall: (i) provide personnel to administer and manage marketing and advertising expenditures made pursuant to MCO Board approved marketing plans and budgets as SAM deems reasonably necessary; and (ii) provide all sales and outreach personnel as SAM deems reasonably necessary to implement the marketing plan approved by the Board."
7. In Section 7.1 of the Agreement, the year "2001" is hereby replaced by the year "2008".
8. Sections 7.2a, 7.2c and 7.2e of the Agreement are hereby deleted and replaced with the words "THIS SECTION IS INTENTIONALLY LEFT BLANK".
9. In Section 7.2b of the Agreement, the year "2000" is hereby replaced by the year "2006".
10. Sections 7.2b(iii) and 7.2d(B) of the Agreement are hereby deleted and replaced in their entirety with the following sentence: "Upon termination of the Agreement, MCO may retain the intellectual property, including but not limited to manuals, clinical guidelines, policies and procedures, developed by SAM during the term of this Agreement at no additional charge; provided however, that MCO shall not in any way prevent SAM from its ongoing use of such intellectual property."
11. The following sentence is added as Section 7.2b(iv) of the Agreement: "MCO shall pay SAM its pro rata share of annual supplemental compensation earned as of the Section b. Termination Date pursuant to Section 6.2b of this Agreement, as amended."
12. Section 7.2d(i) is hereby deleted and replaced in its entirety with the following words: "Cessation of business, including but not limited to, MCO's failure to renew its contract with the State of Maryland, HealthChoice Program."
13. Section 7.2d(C) is hereby deleted and replaced in its entirety by the following paragraph, which is also added as Section 7.2b(v) of the Agreement: "SAM will negotiate in good faith with MCO, if so requested by MCO, to provide to or arrange for MCO wind-down/transition services following the Section b. Termination Date. Wind-down/transition services may include access to the managed care information system, claims adjudication services, prior authorization services, call center services and any other wind-down/transition services required by MCO. MCO shall pay SAM such compensation as may be agreed to by the parties for such services; provided however, that such compensation may not exceed the rates charged SAM by its affiliates for similar services immediately prior to the Section b. Termination Date. Upon the expiration of the wind-down/transition period, which shall not exceed one year from the Section b. Termination Date, all member data, provider contracts and claims records in SAM's possession shall be delivered to MCO for MCO's retention as required by law or regulation."
14. The following sentence is added as Section 7.2d(D) of the Agreement: "MCO shall pay SAM its pro rata share (based on days elapsed from January 1 of the calendar year in which termination occurs) of annual supplemental compensation earned as of the Section d. Termination Date pursuant to Section 6.2b of this Agreement unless MCO terminates this Agreement pursuant to Section 7.2d of this Agreement."

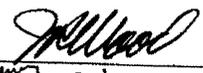
15. In Section 8.2a of the Agreement: The words "one year" are hereby deleted and replaced by the words "two years"; the words "Section 7.2b and" are hereby added immediately preceding the words "Section 7.2.d"; and the following sentences are hereby added at the end of such Section 8.2a: "MCO shall pay SAM a fee ("Non-Compete Fee") of \$500,000 each year during the two year period, which begins on the applicable Termination Date; provided, however, that no Non-Compete Fee shall be due if SAM terminates this Agreement pursuant to Section 7.2b on or after December 31, 2006. The annual Non-Compete Fee is due and payable by the twentieth (20<sup>th</sup>) day of the beginning of each annual period. Notwithstanding the above, if MCO does not pay SAM the applicable Non-Compete Fee when due each year pursuant to this Section 8.2a, as amended, MCO immediately releases SAM from any and all obligations hereunder this Section 8.2a.

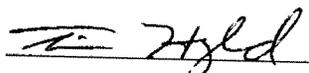
Except as expressly modified by this First Amendment, the Agreement will remain in full force and effect as originally written.

The FIRST AMENDMENT TO THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT is hereby entered into this 20th day of December, 2000.

MARYLAND CARE, INC.

SCHALLER ANDERSON OF MARYLAND, L.L.C.  
By: SCHALLER ANDERSON, INC.  
an Arizona corporation, its manager

By   
Its Chairman

By   
Its Sr. VP/CFO

THE UNDERSIGNED, SCHALLER ANDERSON, INC., an Arizona corporation, hereby agrees to be bound to the provisions of Section 8.2, as amended, of the Amended and Restated MCO Management Services Agreement.

SCHALLER ANDERSON, INC.

By   
Its Chairman/CFO

SUPPLEMENTAL COMPENSATION DEFAULT FORMULA

**Background**

Pursuant to Section 6.2b of the Agreement, as amended, if SAM and MCO are unable to mutually agree on the supplemental compensation program on or before May 15<sup>th</sup> of the applicable calendar year, then SAM and MCO agree to the following default formula with respect to the calculation of supplemental compensation payable to SAM for such calendar year.

**Financial Performance Measure**

In order to ensure the long-term financial viability of the MCO, SAM and MCO agree that net income (after-tax) must exceed █% of Total Revenue. Therefore, the default financial performance target will be █% of Total Revenue, with interim thresholds of █% and █% of Total Revenue.

**Quality Performance Measures**

The quality performance measures will be based MCO's performance compared to national or, if available, Maryland-specific HEDIS results. HEDIS indicators are segregated into three groups of measures: Effectiveness of Care; Access to/Availability of Care; and Use of Services. As of this date, the Maryland Department of Health and Mental Hygiene monitors eight different HEDIS indicators related to Effectiveness of Care, five HEDIS indicators related to Access to/Availability of Care and three HEDIS indicators related to Use of Services. SAM will arrange for an audit of its actual results for each HEDIS indicator monitored by the Department. MCO's actual audited results for each indicator will be compared to the national or, if available, Maryland-specific HEDIS results and each indicator will be assigned to a percentile (typically available for the 50<sup>th</sup>, 75<sup>th</sup> and 90<sup>th</sup> percentiles). MCO's percentile for each indicator within a group of measures will be averaged to establish an average percentile of achievement for each of the three groups (i.e Effectiveness of Care; Access to/Availability of Care; and Use of Services). The benchmark will be an average of the 75<sup>th</sup> percentile for each of the three groups of measures, with interim thresholds at the 60<sup>th</sup> percentile and the 66.66<sup>th</sup> percentile.

**Operational Performance Measures**

Member Satisfaction - A target of 95% has been established for the required level of member satisfaction, with interim thresholds of 85% and 90%.

MCO will evaluate performance related to this measure through the use of the State's member CAHPS' survey. A specific level of member satisfaction will be determined

based on the following question, which will be included within the member CAHPS' survey. All responses indicating Very or Completely Satisfied, Somewhat Satisfied or Neither Satisfied nor Dissatisfied will be considered satisfied as it relates to this measure.

*I would describe my satisfaction with Maryland Physicians Care to friends and family as:*

- A. *Very or Completely Satisfied*
- B. *Somewhat Satisfied*
- C. *Neither Satisfied or Dissatisfied*
- D. *Dissatisfied*

Provider Satisfaction - A target of 90% has been established for the required level of provider satisfaction, with interim thresholds of 80% and 85%.

MCO will evaluate this measure through the use of a provider survey, which will be distributed to all MCO contracted primary care providers. MCO will evaluate performance related to this measure based on the following question, which will be included within the provider survey. All responses indicating Very or Completely Satisfied, Somewhat Satisfied or Neither Satisfied nor Dissatisfied will be considered satisfied as it relates to this measure.

*How would you rate Maryland Physicians Care compared to other managed care organizations?*

- A. *Very or Completely Satisfied*
- B. *Somewhat Satisfied*
- C. *Neither Satisfied or Dissatisfied*
- D. *Dissatisfied*

**Enrollment:**

Not applicable under the default formula.

**Board Discretion:**

Not applicable under the default formula.

## Management Supplemental Compensation Targets/Thresholds

Measure	Target	Threshold			Bonus Percentage
		33%	67%	100%	
<b>Financial:</b> Net income (after-tax)	█%	█%	█%	█%	█%
<b>Quality:</b> Effectiveness of Care	75%	60%	66.66%	75%	█%
Access to Care	75%	60%	66.66%	75%	█%
Use of Care	75%	60%	66.66%	75%	█%
<b>Operational:</b> Member Satisfaction	95%	85%	90%	95%	█%
Provider Satisfaction	90%	80%	85%	90%	█%
<b>Enrollment:</b> Not applicable					█%
<b>Other:</b> Board Discretion					█%
					█%

UNDERTAKING AND AGREEMENT

THIS UNDERTAKING AND AGREEMENT is entered into this 20th day of December, 2000 by and between Maryland Care, Inc. (the "MCO"), and Schaller Anderson of Arizona, L.L.C., an Arizona limited liability company ("SAA").

WHEREAS, MCO and SAA's affiliate, Schaller Anderson of Maryland, L.L.C., a Maryland limited liability company ("SAM") are parties to an Amended and Restated MCO Management Services Agreement dated November 29, 1996 (the "Original MCO Agreement").

WHEREAS, concurrently with the execution of this Agreement, SAM and MCO are entering into a First Amendment to the Amended and Restated MCO Management Services Agreement (the "First Amendment," and collectively with the Original MCO Agreement, the "MCO Agreement").

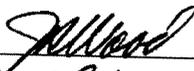
WHEREAS, as a condition precedent to MCO's willingness to enter into the First Amendment, MCO has requested, and SAA has agreed, to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, MCO and SAA agree as follows:

1. If so requested by MCO in writing at least 120 days prior to the effective date of any termination of the MCO Agreement, then commencing on the effective date of the termination of the MCO Agreement and continuing for the period so requested by MCO, but not longer than one year following the effective date of termination of the MCO Agreement, SAA shall continue to perform the administrative services SAA has agreed with SAM to provide to SAM pursuant to the Agreement dated November 29, 1996 between SAA and SAM (the "Administrative Services Agreement"). Such services shall be provided directly to MCO or to such persons or entities to whom MCO directs SAA's performance in writing.
2. MCO shall pay SAA for all services rendered pursuant to this Agreement in the same amounts and on the same terms as SAM pays for such services immediately prior to the effective date of the termination of the MCO Agreement, and shall comply with all of the terms of the Administrative Services Agreement during the period of SAA's performance of such services.

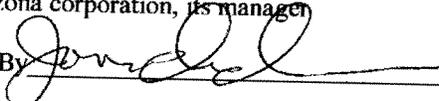
IN WITNESS WHEREOF, the parties have executed this Agreement on the date hereof.

MARYLAND CARE, INC.

By   
Its Chairman

SCHALLER ANDERSON OF ARIZONA, L.L.C.

By: SCHALLER ANDERSON, INC.  
an Arizona corporation, its manager

By   
Its Chairman/CEO

SECOND AMENDMENT TO THE  
AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT

THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT, dated November 29, 1996 (the "Original Agreement"), by and between Maryland Care, Inc., a Delaware corporation (the "MCO"), and Schaller Anderson of Maryland, L.L.C., a Maryland limited liability company ("SAM"), as amended by First Amendment to the Amended and Restated MCO Management Services Agreement dated December 20, 2000 between MCO and SAM (the "First Amendment," and collectively with the Original Agreement, the "Agreement"), is hereby amended by this SECOND AMENDMENT TO THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT (the "Second Amendment"). The effective date of this Second Amendment shall be February 21, 2003.

WHEREAS, MCO and SAM desire to amend the Agreement to modify the terms and conditions of the Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, MCO and SAM hereby amend the Agreement as follows:

1. In Section 6.1b of the Agreement, effective on and after January 1, 2003, the percentage "■%" is hereby replaced by the percentage "■%" and the words "Percentage Fee of ■%" are hereby replaced with the words "Percentage Fee of ■%."
2. In Section 6.2b of the Agreement, effective on and after January 1, 2003, the words "■% of Total Revenue, up to ■% of which shall be attributable to profit levels agreed upon by the parties," are hereby deleted and replaced with the words "■% of base fees paid SAM pursuant to Section 6.1b of the Agreement, as amended (■% of which shall be based upon MCO's financial performance)."
3. The following sentences are added to the end of Section 6.2b of the Agreement effective on and after January 1, 2002. "For the years ended December 31, 2002 and 2003, the amount of annual supplemental compensation paid to SAM shall be at the sole and absolute discretion of the Board. For any year in which MCO does not surpass the budgeted pre-tax operating income (excluding investment income) mutually agreed upon by MCO and SAM, MCO and SAM agree that the annual supplemental compensation payments under this Section, if any, are at the sole and absolute discretion of the Board. In addition, annual supplemental compensation for any year will be limited to the amount by which actual pre-tax operating income (excluding investment income) exceeds the budgeted pre-tax operating income (excluding investment income) for that year. For purposes of this Section 6.2b, the budgeted pre-tax operating income (excluding investment income) will be adjusted for any mid-year budget adjustments mutually agreed upon by MCO and SAM."
4. In Section 7.1 of the Agreement, the year "2008" is deleted and replaced with the year "2012."
5. In Section 7.2b of the Agreement, the year "2006" is deleted and replaced with the year "2011."
6. In Section 8.2a of the Agreement, the year "2006" is deleted and replaced with the year "2011."

7. The following sentences are hereby added at the end of section 3.8: "MCO has advised SAM that it intends to enter into an amendment to its Shareholder Agreements with each MCO shareholder/member organization before July 1, 2003, whereby each MCO shareholder/member organization agrees that its hospital affiliates will not charge higher hospital rates to MCO than the amounts they charge MCO's competitors under an Alternative Rate Methodology ("ARM") or other contractual relationship for the same program (populations). If MCO does not enter into such amendment with each MCO shareholder/member organization by July 1, 2003, the base fee in effect under Section 6.1b of this Agreement will increase by [REDACTED] percent until such time as MCO enters into such agreement with each MCO shareholder/member organization."

9. If MCO is the winning bidder on the current Maryland Health Insurance Plan ("MHIP") bid or otherwise enters into administrative services only contracts for claims processing and/or other administrative services other than to MCO full-risk members, MCO shall pay SAM [REDACTED] % of the amounts received by MCO under those contracts.

Except as expressly modified by the Second Amendment, the Agreement shall remain in full force and effect as originally written.

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT is hereby entered into this 21st day of February, 2003.

MARYLAND CARE, INC.

By Raymond A. Burke  
Its Chairman 2/26/2003

SCHALLER ANDERSON OF MARYLAND, L.L.C.  
By: SCHALLER ANDERSON, INCORPORATED  
an Arizona corporation, its manager

By [Signature]  
Its Sr. VP

THE UNDERSIGNED, SCHALLER ANDERSON, INCORPORATED, an Arizona corporation, hereby agrees to be bound by the provisions of Section 8.2(a) of the Agreement, as amended by this Second Amendment.

SCHALLER ANDERSON, INCORPORATED

By [Signature]  
Its Chairman and CEO

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THIRD AMENDMENT TO THE  
AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT

THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT, dated November 29, 1996 (the "Original Agreement"), by and between Maryland Care, Inc., a Delaware corporation (the "MCO"), and Schaller Anderson of Maryland, L.L.C., a Maryland limited liability company ("SAM"), as amended by First Amendment to the Amended and Restated MCO Management Services Agreement dated December 20, 2000 between MCO and SAM (the "First Amendment,") and Second Amendment to the Amended and Restated MCO Management Agreement dated February 21, 2003 between MCO and SAM (the "Second Amendment," and collectively with the Original Agreement and the First Amendment, the "Agreement"), is hereby amended by this THIRD AMENDMENT TO THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT (the "Second Amendment"). The effective date of this Third Amendment shall be July 1, 2005.

WHEREAS, MCO and SAM desire to amend the Agreement to modify the terms and conditions of the Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, MCO and SAM hereby amend the Agreement as follows:

1. In Section 6.1b of the Agreement, effective on and after July 1, 2005, the term "Total Revenues" shall be defined as all funding received from the Maryland Department of Health and Mental Hygiene related to the provision of services to full risk MCO members, less applicable premium taxes and including, but not limited to, capitation revenue, delivery and other supplemental payments, and other revenue specific to such MCO members, including reinsurance recoveries, third party liability recoveries and investment income (excludes investment income related to the MCO's equity).

Except as expressly modified by the Second Amendment, the Agreement shall remain in full force and effect as originally written.

THIS THIRD AMENDMENT TO THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT is hereby entered effective as of July 1, 2005.

MARYLAND CARE, INC.

SCHALLER ANDERSON OF MARYLAND, L.L.C.  
By: SCHALLER ANDERSON, INCORPORATED  
an Arizona corporation, its manager

By

Its

*Raymond G. [Signature]*  
Chief Financial Officer  
*V.P. Franco Treasurer*  
*12/6/2005*

By

Its

*Patricia J. Davis*  
SECRETARY

**FOURTH AMENDMENT TO THE  
AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT**

**THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT**, dated November 29, 1996 (the "Original Agreement"), by and between Maryland Care, Inc., a Delaware corporation (the "MCO"), and Schaller Anderson of Maryland, L.L.C., a Maryland limited liability company ("SAM"), as amended by **First Amendment** to the Amended and Restated MCO Management Services Agreement, dated December, 20, 2000 between MCO and SAM, and **Second Amendment** to the Amended and Restated MCO Management Services Agreement, dated as of January 1, 2003, and the **Third Amendment** to the Amended and Restated MCO Management Services Agreement, dated July 1, 2005 (collectively with the Original Agreement, the "Agreement"), is hereby amended by this **FOURTH AMENDMENT TO THE AMENDED AND RESTATED MCO MANAGEMENT SERVICES AGREEMENT** (the "Fourth Amendment"). The effective date of this Fourth Amendment shall be March 1, 2006 (the "Effective Date").

**RECITALS:**

- A. MCO is filing an application with the federal Centers for Medicare and Medicaid Services (CMS) to be come a Medicare Advantage Organization (MAO).
- B. In order to obtain an MAO agreement with CMS (MAO Agreement), any agreement of MCO that delegates any core function MCO to another organization needs to meet certain federal regulatory requirements.

**AGREEMENT:**

MCO and SAM agreed to the terms and conditions of this Fourth Amendment in order to comply with the federal regulations applicable to MAOs. Unless otherwise provided, all capitalized terms in this Fourth Amendment will have the same meaning as provided in the Original Agreement. MCO and SAM will comply with the terms of this Fourth Amendment until the Fourth Amendment terminates upon the mutual agreement of MCO and SAM or terminates in accordance with Section 4 below and for the other continuing periods provided for in this Fourth Amendment.

**1. LAWS, REGULATIONS AND CMS INSTRUCTIONS:**

SAM agrees to fully comply with all applicable Medicare laws, regulations and CMS instructions.

**2. ACCURACY AND CONFIDENTIALITY OF ENROLLEE RECORDS:**

4/14/06  
cc. Deb Jones  
Cheryl Campbell  
8-54 173  
Brian Fisher

AETNA 100097

SAM agrees to comply with all state and Federal requirements for accuracy and confidentiality of enrollee records, including the requirements established by MCO and the Medicare Advantage (MA) program and the specific requirements of 42 CFR 422.118. This includes, but is not limited to, (i) abiding by all applicable state and federal laws and regulations regarding confidentiality and disclosure of medical records or other health or enrollment information, (ii) safeguarding the privacy of information that identifies a particular enrollee, and (iii) having procedures that specify what purposes information will be used for within SAM, to whom and for what purposes SAM will disclose the information to third parties outside SAM, ensure that medical information is only released in accordance with applicable state or federal law, or pursuant to court orders or subpoenas, maintain the records and information in an accurate and timely manner and ensure enrollees' timely access to records and information that pertain to them.

**3. MAINTENANCE OF RECORDS AND GOVERNMENT ACCESS:**

SAM agrees to maintain all records related to the Agreement for at least six (6) years, or such period in excess of six (6) years as may be required by law or regulation, and to allow the U.S. Department of Health and Human Services (HHS), the Comptroller General or their designees to evaluate, through inspection, evaluation, audit or other means, the quality, appropriateness and timeliness of services furnished to Medicare enrollees under the MAO Agreement, the facilities of MCO and enrollment and disenrollment records and such other information that the Secretary of HHS may deem necessary to enforce the MAO Agreement with MCO.

**4. CONTRACT REVOCATION AND TERMINATION:**

MCO reserves the right to revoke and or terminate this Fourth Amendment and the Agreement, subject to the notice and cure provisions of the Agreement, in the event that SAM does not perform services under the terms of the Agreement or this Fourth Amendment satisfactorily as determined by MCO or CMS and if required reporting and disclosure requirements and not met on a timely basis.

**5. CONTRACT COMPLIANCE:**

Sam agrees to perform its obligations under the Agreement consistent with and in full compliance with the provisions and requirements or MCO's MAO Agreement.

**6. CREDENTIALING PROCESS:**

MCO retains the right to review and approve the provider credentialing process maintained by SAM and to audit such credentialing process on an ongoing basis. MCO reserves the right to approve, suspend or terminate SAM's delegation of the provider credentialing process.

**7. MCO RESPONSIBILITY TO CMS:**

Notwithstanding any terms or provisions of the Agreement or other legal or financial obligations of MCO and SAM to each other, SAM acknowledges that any services performed by SAM on behalf of MCO under the terms of its MAO Agreement shall be monitored by MCO and that MCO is ultimately responsible to CMS for the performance of all services under the terms of its MAO Agreement.

**8. INCONSISTENCY WITH AGREEMENT:**

This Fourth Amendment will be considered an Amendment to the Agreement, which is incorporated as though fully set forth within the Agreement. Section 1-7 and this Section 8 of this Fourth Amendment will govern in the event of conflict or inconsistency with any provision of the Agreement. The Agreement will govern in the event of conflict or inconsistency with Section 9 of this Fourth Amendment.

**9. INDEMNIFICATION:**

Each party (the "Indemnifying Party") will hold harmless and indemnify the other party (the "Indemnified Party") from any claims, losses, damages, liabilities, costs, expenses, penalties or obligations (including attorneys fees) which the Indemnified Party may incur due to the Indemnifying Party's (i) breach of this Fourth Amendment; or (ii) negligence or willful misconduct in the performance of obligations under this Fourth Amendment. Indemnifying or Indemnified Party will include all employees, agents, officers, directors, shareholders, members, contractors, parents, and subsidiary and affiliate entities of the party.

**MARYLAND CARE, INC.**

**SCHALLER ANDERSON OF MARYLAND, L.L.C.**

By: *Raymond A. Gank*  
Print Name: Raymond A. Gank  
Title: Vice President / Treasurer  
Date: 3/15/2006

By: Schaller Anderson, Incorporated, its Manager  
By: *Patricia J. Davis*  
Print Name: PATRICIA J. DAVIS  
Title: SECRETARY  
Date: 04.01.06



2. The PAC management fee shall equal     % of Total Revenue for PAC Enrollees.
3. PAC enrollees will not be counted for purposes of determining the applicable Medicaid scale discount described in Section 6.1b of the Agreement. However, to the extent MPC qualifies for the Medicaid scale discount for its HealthChoice enrollees, the PAC management fee shall be reduced by the same percentage, to a maximum reduction of     %.
4. Management Supplemental Compensation equal to     % of PAC management fees can be earned by SAM based upon mutually agreed upon Management Supplemental Compensation targets between MCO and SAM.
5. Except as expressly modified by this Fifth Amendment, the Agreement shall remain in full force and effect as originally written.

MARYLAND CARE, INC.

By: Raymond A. Grabe  
Printed Name: RAYMOND A. GRABE  
Title: CHAIRMAN  
Date: 1/26/2007

SCHALLER ANDERSON OF MARYLAND,  
L.L.C.

By Schaller Anderson, Incorporated, its manager

By: Patricia J. Davis  
Printed Name: PATRICIA J. DAVIS  
Title: SECRETARY  
Date: 02-12-2007

PLAN MANAGEMENT SERVICES AGREEMENT

EFFECTIVE

DATE: May 1, 2002

EXECUTION

DATE: April 11, 2002

PARTIES: SOUTHWEST CATHOLIC HEALTH NETWORK CORPORATION (dba Mercy Care Plan), an Arizona nonprofit corporation ("PLAN"); and

SCHALLER ANDERSON OF ARIZONA, L.L.C., an Arizona limited liability company ("MANAGER").

RECITALS:

- A. WHEREAS, PLAN is a nonprofit corporation, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and as such, operates in the furtherance of the general health and welfare of the residents of the communities in which it does business; and
- B. WHEREAS, PLAN is a prepaid health plan that has contracts to manage necessary Medicaid and other services for eligible citizens in various Arizona communities enrolled in the PLAN under its contracts with the Arizona Health Care Cost Containment System ("AHCCCS") and other payors; and
- C. WHEREAS, PLAN deems it in the best interest of its continuing operations and the best interests of the communities within which it does business to contract with a third party MANAGER for professional management services and to sell certain administrative assets to the MANAGER to provide for the transition of management services to the MANAGER; and
- D. WHEREAS, PLAN has identified a third party, the MANAGER, for professional management services that will operate the PLAN within the tax exempt purpose of the PLAN and that recognizes the missions of the PLAN and the PLAN's owner-organizations; and
- E. NOW, THEREFORE, PLAN and MANAGER desire to enter into this Plan Management Services Agreement (the "Agreement") as of the Effective Date pursuant to which the third party MANAGER will provide comprehensive, professional management services for the PLAN beginning on the Effective Date, on the terms and subject to the conditions set forth in this Agreement.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

ENGAGEMENT;  
DELEGATION OF GENERAL AUTHORITY BY PLAN

1.1 Engagement and Delegation of General Authority by PLAN; Reservation of Powers. PLAN engages MANAGER to perform the services described in Article 2 of this Agreement (the "Services"), and MANAGER accepts the engagement, on the terms and subject to the conditions set forth in this Agreement. PLAN hereby delegates to MANAGER the general authority to supervise and manage the day-to-day operations of the PLAN and to perform the Services delineated herein. MANAGER and PLAN agree to carry out their obligations under this Agreement in compliance with PLAN's articles of incorporation and bylaws, and all applicable requirements of state and Federal laws, rules and regulations, including but not limited to the AHCCCS policies and procedures applicable to the performance of the Services hereunder. MANAGER and PLAN acknowledge that PLAN's articles of incorporation and bylaws contain provisions that state that certain powers may not be delegated by PLAN. To the extent that PLAN's articles of incorporation or bylaws require that any action or matter be approved by the PLAN's Board of Directors (the "Board") or statutory members (for purposes of this Agreement, "owner-organizations"), such actions or matters shall be reserved to PLAN (referred to in this Agreement as "Reserved Powers"), and subject to the approval by the Board and/or the owner-organizations, if applicable, notwithstanding any provision to the contrary in this Agreement.

1.2 Control by PLAN Board of Directors. PLAN, through its Board, shall at all times exercise ultimate control over and authority for the PLAN and the standards, policies and directives used by MANAGER in the management of the PLAN. All standards, policies and directives developed and maintained by MANAGER pursuant to this Agreement are the responsibility of the Board and are subject to the approval of the Board. The Board may, but shall not be obligated to, adopt as PLAN standards, policies and directives the recommendations and/or proposals made to it by MANAGER. MANAGER acknowledges that PLAN and the owner-organizations are organized and operated for charitable purposes under Section 501(c)(3) of the Internal Revenue Code. MANAGER agrees that at all times it shall operate the PLAN in furtherance of the tax exempt purpose of the PLAN and the PLAN's owner-organizations. Accordingly, PLAN shall be responsible for managing, or arranging for the management of, the investment of PLAN funds, and MANAGER shall not be responsible therefor, except that MANAGER shall follow the standards, policies and directives of the Board, or the Finance Committee of the Board, for management of the investment of PLAN funds, as communicated to MANAGER pursuant to Section 1.3. MANAGER shall take no action in operating the PLAN that would require the PLAN or the PLAN's owner-organizations to act in a manner that is not consistent with this charitable status and in furtherance of the PLAN's charitable purposes or that would jeopardize the 501(c)(3) tax exempt status of the PLAN or the PLAN's owner-organizations.

1.3 Directives to MANAGER; Reliance by MANAGER. MANAGER shall perform the Services set forth in this Agreement, or assigned to it by the Board pursuant to the terms and within the scope of this Agreement, in accordance with the standards, policies and directives of the Board provided to MANAGER from time to time. The Board shall communicate all of its approved standards, policies and directives to MANAGER, and MANAGER shall be subject to and responsible for carrying out all such written standards, policies or directives. MANAGER shall follow, and shall be entitled to rely on and assume the validity of, all communications from the Board, the Chairman of the Board, or an authorized designee of the Board. In providing standards, policies and directives to MANAGER, the Board will act in good faith and consistent with PLAN's charitable purposes and all applicable legal requirements.

1.4 Independent Contractor. MANAGER shall serve as an independent contractor in performing Services pursuant to this Agreement. PLAN and MANAGER are not and will not be deemed to be partners, joint venturers, co-venturers, or employer and employee, and MANAGER shall not be liable either primarily or as guarantor for the debts or other obligations of PLAN.

1.5 Cooperation. PLAN shall cooperate in good faith with MANAGER so that MANAGER may reasonably perform Services under this Agreement. MANAGER shall cooperate in good faith with PLAN so that PLAN may reasonably perform its duties under this Agreement.

## ARTICLE 2

### SERVICES OF MANAGER

#### 2.1 General Duties; Annual Management Plan; and Reports

a. General Duties. MANAGER shall perform or provide for the Services described in this Agreement including managing the day-to-day business and operation of the PLAN. MANAGER shall serve as the primary liaison for the PLAN with AHCCCS. MANAGER shall provide or arrange for and compensate all personnel necessary to provide Services under this Agreement ("Manager Employees" as further defined in Section 2.2.a.) and MANAGER shall pay all costs necessary to provide Services under this Agreement, except as expressly provided in this Agreement. MANAGER shall secure the advance approval of the Board or its owner-organizations, as applicable, for any action that is a Reserved Power.

b. Development of Management Plan; Board Approval. MANAGER shall submit to the Board for its review and approval or disapproval an annual management plan (the "Management Plan") designed to implement the strategic goals and objectives of the PLAN. The Management Plan will set forth the efforts, methods and resources to be used by MANAGER as well as the timetable to be observed to achieve those goals and objectives. Along with the Management Plan, which will be submitted by MANAGER on or before the beginning of each PLAN fiscal year during which this Agreement remains in effect, MANAGER will submit to the

) Board oral or written information about the development of the Management Plan in order to assist the Board in making an informed decision regarding approval or disapproval of the Management Plan. For the PLAN's first full fiscal year following the Effective Date, the Mercy Care Plan Action Plan, as previously adopted by the Board, shall serve as the Management Plan.

c. Budgets. During the term of this Agreement, MANAGER shall submit to the Board for approval, disapproval or modification by the Board, an annual PLAN operating budget, including marketing expenditures (if appropriate) (the "Budget"), designed to meet applicable law and regulations, the mission of PLAN and the goals and objectives of the Board. MANAGER shall submit to the Board, for approval, disapproval or modification by the Board, from time to time during the fiscal year, proposed revisions to the Budget to reflect material changes in the Budget during the fiscal year. MANAGER shall also provide reports to the Board as provided in Sections 2.1.d. and 2.2.1.

d. Reports by MANAGER. Within ninety (90) days after each PLAN fiscal year-end, MANAGER shall deliver to the Board a written report on the completion of the goals and objectives set forth in the Management Plan. In addition to the Management Plan, MANAGER agrees to provide monthly (or less frequently upon the mutual agreement of the Parties) reports to the Board and committees of the Board as reasonably necessary for the Board to provide MANAGER with guidance in providing Services hereunder. MANAGER also agrees to make reasonable efforts to provide ad hoc reports as reasonably requested in writing by the Board. The format for such reports shall be mutually agreed to by the Board and MANAGER.

) e. PLAN Reports. MANAGER shall timely file all mandated PLAN reports with AHCCCS and any other applicable agency, and cause such reports and the information and data therein contained to have been properly and accurately compiled and completed.

2.2 Services. MANAGER shall provide the following services, all of which shall be provided at MANAGER's cost, except as expressly provided in this Agreement:

a. Provision of PLAN Personnel. MANAGER shall provide or arrange for the services of all personnel for the day-to-day management and operation of the PLAN, all of whom shall be employees of MANAGER (the "Manager Employees") including: a qualified chief executive officer (CEO) of the PLAN, a qualified chief medical officer (CMO) of the PLAN, a qualified Chief Operating Officer (COO) of the PLAN (if any) and a qualified Chief Financial Officer (CFO) of the PLAN. All Manager Employees shall be and remain employees of MANAGER and not employees or independent contractors of the PLAN throughout the term of this Agreement. MANAGER shall determine the amount and nature of and shall pay all compensation to the Manager Employees for Services rendered under this Agreement. The Board shall have input into MANAGER'S selection of the PLAN'S CEO, CMO, COO (if any) and CFO. The appointment and removal of the PLAN'S CEO shall be subject to the approval of PLAN's owner-organizations in accordance with the PLAN's Reserved Powers. In addition, MANAGER shall remove the PLAN's CEO if directed to do so as a result of action by the PLAN's owner-organizations in accordance with the provisions of the PLAN's Reserved Powers. The appointment of the PLAN's CMO, COO (if any) and CFO shall be subject to the Board's approval.

) Manager Employees will oversee the PLAN'S compliance with applicable requirements of AHCCCS and any other state or Federal law, rule or regulation. As requested by PLAN, PLAN'S CEO, CMO, COO (if any) and CFO shall also assist PLAN owner-organizations in the oversight of their non-PLAN AHCCCS activities. MANAGER shall not be responsible for any personnel who are not employed by MANAGER.

Manager Employees shall be subject to the following:

i. Hiring, Training, Supervision and Termination. MANAGER shall be solely responsible for hiring, training, supervising and terminating Manager Employees in accordance with applicable state and Federal laws.

ii. Compensation and Employee Benefits. MANAGER shall solely determine and be solely responsible for the payment of compensation and the provision of employee benefits for Manager Employees. MANAGER shall be responsible for record keeping and payroll accounting (including all payroll tax withholding and reporting) for Manager Employees.

iii. PLAN Employees. MANAGER agrees to interview and hire qualified PLAN employees, which apply to MANAGER and who have equal or better qualifications compared to non-PLAN candidates, if any, for each respective PLAN position, and who otherwise meet MANAGER'S employment requirements. This Section 2.2.a.iii. shall not be construed as creating any employment contract, term of employment contract or employee benefit between MANAGER and any PLAN employee. All PLAN employees hired by MANAGER shall be terminable at will by MANAGER, except as otherwise required by law.

iv. WARN Act. The PLAN shall voluntarily give a WARN Act notice to all of the PLAN employees at least 60 days prior to the Effective Date. The giving of such notice, however, is not a conclusion by either party that giving a WARN Act notice is legally required.

b. Administrative Services. MANAGER shall provide all printing and copying, stationery, forms, postage and all other office supplies reasonably necessary in connection with the day-to-day operations of the PLAN. In addition, MANAGER shall retain, at its sole cost and expense, all consultants, accountants and attorneys that it deems necessary for the proper and efficient operation of the PLAN under this Agreement.

Manager Employees will manage the following PLAN operations:

MEDICAL MANAGEMENT

Quality Management  
Utilization Management  
Case Management  
Prevention and Wellness  
Credentialing  
Pharmaceutical Program  
Disease Management  
Medical Technology Management

OPERATIONS

Provider Relations/ Contracting  
Member/Customer Services  
Human Resources/Training  
Claims and Encounter Data  
Grievance and Appeals  
Marketing Oversight  
Corporate Compliance

FINANCE

Financial Reporting and Accounting  
Financial Planning and Analysis  
TPL and Reinsurance Recoveries  
RFP Response and Rate Analysis  
Audit and Compliance  
Information Systems  
Facilities and Materials Management

c. Office Space. Following the execution of this Agreement, MANAGER shall review PLAN's office space lease for PLAN offices located at 2800 North Central Avenue, Phoenix, Arizona 85004 (the "Office Lease") to determine whether the Office Lease is assignable to and assumable by MANAGER and whether MANAGER is willing to assume the Office Lease. If the Office Lease is assignable and MANAGER elects to assume the Office Lease, then commencing on the Effective Date, MANAGER shall discharge all of PLAN's obligations under the Office Lease. If MANAGER does not assume the Office Lease, MANAGER shall reimburse PLAN for its costs under the Office Lease commencing as of the Effective Date, including but not limited to costs related to parking, utilities, maintenance costs and all other charges required to be paid by PLAN under the Office Lease, except that MANAGER shall not be liable for any costs arising prior to the Effective Date, whether such costs are directly provided for in the Office Lease or whether such costs arise as a result of PLAN's breach or nonperformance under the Office Lease. Upon the expiration or earlier termination of the Office Lease, and subject to receipt of any approval required under the Reserved Powers in the case of an office lease to which PLAN is a party, MANAGER may renew or extend the Office Lease or enter into a subsequent office lease for PLAN offices.

d. Furniture, Fixtures and Equipment and Deferred Charges. MANAGER shall purchase from PLAN certain furniture, fixtures, and equipment (including telephones, copiers, personal computers and fax machines) currently owned by PLAN and deferred charges related to software development costs and used or contemplated to be used in its operations (the "Existing PLAN Assets"). Such purchase shall be pursuant to a separate Asset Purchase Agreement (the "Purchase Agreement") to be executed by PLAN and MANAGER within thirty days of execution of this Agreement. Both parties agree to negotiate in good faith the Purchase Agreement and if the closing under the Purchase Agreement does not occur for any reason prior to the Effective Date of this Agreement, the Effective Date of this Agreement shall be delayed until the closing date of the Purchase Agreement. If the closing under the Purchase Agreement fails to occur on or before July 1, 2002, either party may declare this Agreement void upon written notice to the other party. The Purchase Agreement shall provide for a closing of such purchase before the Effective Date, and a purchase price for the Existing PLAN Assets equal to the PLAN's depreciated book value of the Existing PLAN Assets as of April 30, 2002, and shall contain representations, warranties, covenants, agreements and indemnities by PLAN customary in sales of assets to unrelated third parties. In addition to purchasing the Existing PLAN Assets, MANAGER shall provide at MANAGER's expense all additional furniture, fixtures and equipment reasonably necessary for the proper and efficient operation of the PLAN during the term of this Agreement.

e. Capital and Operating Leases and Software License Agreements. Following the execution of this Agreement, MANAGER shall review PLAN's capital and operating leases other than the Office Lease (the "Leases"), and software license agreements (the "Licenses") to determine whether the Leases and Licenses are assignable to and assumable by MANAGER and whether MANAGER is willing to assume the Leases and Licenses. With respect to any Leases or Licenses that are assignable and which MANAGER elects to assume, MANAGER shall discharge all of PLAN's obligations under the Leases and Licenses arising after the Effective Date. Commencing on the Effective Date, MANAGER shall reimburse PLAN for its costs under any Leases and Licenses not assumed by it, except that MANAGER shall not be liable for any costs arising prior to the Effective Date, whether such costs are directly provided for in the Leases or Licenses or whether such costs arise as a result of PLAN's breach or nonperformance under the Leases or Licenses. Upon the expiration or earlier termination of any Lease or License, MANAGER may, subject to any approval required under the Reserved Powers in the case of a Lease or License to which PLAN is a party, enter into a new Lease or License, or extend or renew any existing Lease or License.

f. Books and Records; Confidentiality. All PLAN member records, PLAN financial records, PLAN corporate records, PLAN employee files, PLAN data (including current contracting information, eligibility, enrollment, benefits, claims, provider information and prior authorization files) and other such items relating to the business activities of the PLAN (collectively the "PLAN Records"), whether developed by the PLAN or developed by MANAGER, shall be the property of PLAN. MANAGER shall catalog, store, and maintain the PLAN Records during the term of this Agreement. MANAGER shall establish and maintain PLAN policies and procedures, subject to approval of the Board pursuant to Section 1.2, to comply with all standards of AHCCCS and all applicable state and Federal laws concerning the

confidentiality of all PLAN Records. PLAN and MANAGER shall each have a non-exclusive right to use all PLAN policies and procedures during and after the term of this Agreement.

g. Capitation Management. MANAGER shall establish and maintain PLAN standards, policies and procedures for capitation management and risk pool management, if any, and shall ensure the timely and accurate distribution of PLAN'S capitation payments to PLAN contracted physicians and other providers. MANAGER shall establish procedures for the payment of the PLAN'S monthly capitation payments to PLAN contracted physicians and other providers within fourteen (14) working days of receipt of capitation premiums from AHCCCS or other payor. The amount of the capitation payments shall be at the sole and absolute discretion of PLAN after giving consideration to recommendations of MANAGER. However, the capitation payments shall be consistent with PLAN'S contractual obligations to the PLAN'S contracted physicians and other providers.

h. Claims Processing. MANAGER shall establish and maintain PLAN standards, policies and procedures for the timely and accurate processing and payment of claims for covered services provided to PLAN members. The claims processing guidelines shall be maintained in accordance with the requirements of state and Federal law, and the standards and requirements maintained by all payors, including AHCCCS.

i. Contracting. MANAGER shall negotiate, with advice and direction from the Board, all of PLAN'S provider contracts with physicians, hospitals and related ancillary service providers relating to the PLAN; provided however, that all such contracts shall be in the name of PLAN and shall be signed by PLAN'S CEO or other authorized representative of PLAN. MANAGER shall also prepare all bid packages and proposals for PLAN'S contracts with AHCCCS and other payors. MANAGER shall maintain the confidentiality of all terms and conditions of such contracts in accordance with Section 2.2.f. of this Agreement.

j. Enrollment. MANAGER shall establish and maintain PLAN standards, policies and procedures for member enrollment services. MANAGER shall receive and reconcile the PLAN'S monthly membership files with the payors within thirty days of receipt of a full member file from the payors.

k. Encounter Data. MANAGER shall establish and maintain PLAN standards, policies and procedures for encounter data services in accordance with the requirements of state and Federal laws and AHCCCS. This shall include the collection, maintenance and submission of encounter data to AHCCCS and other payors within their respective time-lines, standards and requirements.

l. Financial Services. MANAGER shall provide financial services related to PLAN activities, including the following: accounting, bookkeeping, operating budget, tax matters, accounts receivable, accounts payable and reporting. MANAGER shall maintain standards, policies and procedures for financial services for PLAN. All financial services shall be in compliance with generally accepted accounting principles ("GAAP"). Monthly financial reporting will be available by the tenth working day of each month for the previous month and year-to-date performance. Within 90 days following the end of each fiscal year, MANAGER shall provide to the Finance Committee of the Board, for its review and action, an initial draft

audit report by a national independent accounting firm selected by the Board and acceptable to MANAGER. Within 120 days following the end of each fiscal year, MANAGER shall provide to the Board the final draft audit report for its review and action.

m. Potential Managed Care Information Systems Change. MANAGER is evaluating the PLAN's current Electronic Data Systems Corporation MetaVance™ managed care information system (the "EDS System"). MANAGER shall determine whether to continue use of the EDS System, or to change to a QMACS™ managed care information system. If such change is made, it shall be made no later than January 1, 2003, through a date-of-service conversion. MANAGER shall pay all of the costs of the conversion to QMACS™. MANAGER agrees to bear the cost of maintaining, terminating or amending the EDS System. If the software license for the EDS System is unable to be transferred to MANAGER, then commencing on the Effective Date, MANAGER shall reimburse PLAN for payments made by PLAN under such software license.

n. IS Hardware and Connectivity. MANAGER will be responsible for obtaining and maintaining all hardware necessary to access and use the managed care information system for the PLAN (whether the EDS System, or QMACS™). All telecommunications costs for PLAN'S access to the applicable managed care information system will be the responsibility of MANAGER.

o. Software License. This Agreement does not include title to, license grant or copyright release to any proprietary aspect of MANAGER'S computer systems. PLAN is aware that MANAGER has license agreements with other companies for the use of certain proprietary computer software programs. PLAN shall not request MANAGER to violate any aspect of such license agreements. PLAN shall not be permitted to make any modification to the proprietary software included in MANAGER'S license agreements or other contracts. Upon termination of this Agreement, PLAN shall return to MANAGER any and all copies of any of MANAGER'S proprietary software computer system design documents or other system documentation in the possession of PLAN.

p. Marketing and Public Relations. MANAGER shall provide the administration and management of all advertising and marketing operations and expenditures of the PLAN, made pursuant to Board-approved advertising and marketing budgets. All advertising and marketing costs of the PLAN, including broker fees and media advertising costs will be paid by PLAN. As part of the Annual Management Plan, MANAGER shall make annual recommendations to the Board for advertising and marketing budgets.

q. Member Services. MANAGER shall maintain PLAN standards, policies and procedures for member services in accordance with the requirements of state and Federal law and the standards of accreditation organizations having authority over the PLAN, including AHCCCS. MANAGER shall manage the PLAN to maintain a customer service abandonment rate which meets AHCCCS and other payors' respective standards and requirements.

r. Provider Relations. MANAGER shall maintain PLAN standards, policies and procedures for provider relations for PLAN physicians and providers that provide covered

) services to PLAN members. MANAGER shall manage the PLAN to maintain the PLAN'S provider satisfaction of at least 80% each year as measured by a provider survey.

s. Quality Management and Credentialing. MANAGER shall advise the Board in establishing PLAN standards, policies and procedures for quality management in accordance with the requirements of state and Federal law and AHCCCS rules and regulations.

t. Case Management and Utilization Management. MANAGER shall maintain an ongoing PLAN Case Management and Utilization Management program (the "CM/UM Program") to address prior authorization, concurrent review, case management, and retrospective review of the quality, appropriateness, level of care and utilization of all covered services received by PLAN members. The PLAN'S CM/UM Program shall be maintained in accordance with the requirements of state and Federal law and AHCCCS rules and regulations. The Board will delegate responsibility for the CM/UM Program to the PLAN'S Utilization Management Committee, which the CMO shall chair and of which the CMO shall be a voting member.

### ARTICLE 3

#### REPRESENTATIONS, WARRANTIES AND COVENANTS OF PLAN

) PLAN makes the following representations and warranties to and covenants with MANAGER. PLAN acknowledges that MANAGER is entering into this Agreement with PLAN in material reliance on the accuracy of the following representations, warranties and covenants:

3.1. Authority; Enforceability. PLAN has full power and authority to enter into and perform this Agreement, and each individual signing this Agreement on behalf of PLAN has actual authority to do so. This Agreement has been duly authorized, executed, and delivered by PLAN and represents the legal, valid, and binding agreement of PLAN, enforceable against PLAN, in accordance with its terms. Upon execution of this Agreement, PLAN shall advise MANAGER in writing of the members of the Board and MANAGER may rely on such notice until it is revised by a subsequent written notice.

3.2. No Conflicts. Except for obtaining the consent of AHCCCS to this Agreement, the execution, delivery, and performance of this Agreement by PLAN does not: (a) require the consent, waiver, approval, license, or authorization of any person or public authority which has not been obtained; (b) violate any provision of law applicable to PLAN or this Agreement; (c) conflict with or result in a breach of or a default under any agreement or instrument to which PLAN is a party or by which it or its assets are bound; (d) create any lien, security interest or other encumbrance upon any of the property or assets of PLAN; or (e) violate any judicial or administrative decree, regulation, or any other restriction of any kind or character to which PLAN or any of its assets are bound.

) 3.3. Reimbursements. PLAN shall not do anything willful to jeopardize Medicare, Medicaid, or other third-party payor arrangements of the PLAN.

3.4. Performance Bond and Capitalization. To the extent that the rules established from time to time by AHCCCS or any other payor require that there be performance bonds or other capitalization provided by or with respect to PLAN, PLAN shall procure and provide the same.

3.5. Covenant Not to Hire. During the term of this Agreement, and if this Agreement is terminated by PLAN or MANAGER pursuant to Section 6.2(a), or Section 6.2(c), or by MANAGER pursuant to Section 6.2(b), then for an additional period of one year following the termination of this Agreement, PLAN will not employ, solicit to employ or offer to employ any of the manager-level and above Manager Employees unless specifically permitted by MANAGER in writing from time to time. This Section 3.5 shall not apply if this Agreement is terminated by PLAN or MANAGER pursuant to Section 6.1 or by PLAN pursuant to Section 6.2(b).

3.6. Notice of Board Meetings. Throughout the term of this Agreement, MANAGER shall attend all meetings of the Board provided however, that Board may require that MANAGER be excluded from any meeting or portion thereof, as determined in the reasonable discretion of the Board.

#### ARTICLE 4

#### REPRESENTATIONS, WARRANTIES AND COVENANTS OF MANAGER

MANAGER makes the following representations to and covenants with PLAN. MANAGER acknowledges that PLAN is entering into this Agreement in material reliance on the accuracy of the following representations, warranties and covenants:

4.1. Authority; Enforceability. MANAGER has full power and authority to enter into and perform this Agreement, and each individual signing this agreement on behalf of MANAGER has actual authority to do so. This Agreement has been duly authorized, executed, and delivered by MANAGER and represents the legal, valid, and binding agreement of MANAGER, enforceable against MANAGER in accordance with its terms.

4.2. No Conflicts. The execution, delivery and performance of this Agreement by MANAGER does not: (a) require the consent, waiver, approval, license, or authorization of any person or public authority which has not been obtained; (b) violate any provision of law applicable to MANAGER or this Agreement; (c) conflict with or result in a breach of or a default under any agreement or instrument to which MANAGER is a party or by which it or its assets are bound; or (d) violate any judicial or administrative decree, regulation, or any other restriction of any kind or character to which MANAGER or any of its assets are bound.

4.3. Covenant Not To Hire. During the term of this Agreement, and if this Agreement is terminated by PLAN or MANAGER pursuant to Section 6.2(a) or Section 6.2(c), or by PLAN pursuant to Section 6.2(b), then for an additional period of one year following the termination of

this Agreement, MANAGER will not, and will not permit any of its employees to, employ or offer to employ any manager-level or above employee of an owner-organization of the PLAN, except for the hiring of PLAN employees by MANAGER as delineated in Section 2.2.a. of this Agreement or as may be specifically permitted by PLAN's owner-organizations in writing from time to time.

4.4 Confidentiality. MANAGER shall maintain the confidentiality of PLAN patient records, charges, marketing strategies, managed health care information, utilization, and other confidential information regarding the PLAN, except to the extent that disclosure is required by law.

4.5 Access. If this Agreement is determined at any time during its term to be subject to the provisions of 42 Code of Federal Regulations § 420.302, or any successor regulation which governs access to books and records of subcontractors of services to Medicare providers with a value or cost of \$10,000 or more during a twelve-month period, then MANAGER agrees to make available upon the request of the Secretary of Health and Human Services or the Comptroller General, the contracts, books, documents, and records necessary to verify the nature and extent of the cost of providing Medicare services under this Agreement, if any; provided, however, that any applicable attorney-client, accountant-client, or other legal privilege shall not be deemed waived by virtue of this Section 4.5. Such inspection shall be available up to four years after the rendering of such Services.

4.6 Reimbursements. MANAGER shall not do anything willful to jeopardize Medicare, Medicaid, or other third-party payor arrangements of the PLAN.

4.7 Human Resources. MANAGER shall indemnify, defend and hold PLAN harmless from and against any costs, damages or liabilities, including, without limitation, any severance obligations, with respect to any Manager Employees, except as provided for in Section 6.3(b)(ii)(A) of this Agreement.

4.8 No Federal Program Exclusion; No Convictions. MANAGER represents and warrants that to MANAGER's knowledge, after reasonable inquiry, none of its officers and directors nor any Manager Employee is excluded from any federal health care program or has been convicted of a crime relating to healthcare or a felony as of the Effective Date of this Agreement and during the term of this Agreement. If MANAGER becomes aware that MANAGER, any officer or director or any Manager Employee is excluded from a federal health care program or is convicted of a crime relating to healthcare or a felony, MANAGER shall immediately notify the Board. If such action involves any Manager Employee, MANAGER shall immediately remove such individual from providing services under this Agreement.

ARTICLE 5  
COMPENSATION

5.1(a) Monthly Management Fee. PLAN agrees to pay MANAGER, within ten (10) working days of PLAN'S receipt of an invoice from MANAGER a Monthly Management Fee calculated as follows:

- (i) AHCCCS Acute Prior Period Coverage (PPC). █ % of Total Revenue (as defined below) attributable to PLAN'S enrolled AHCCCS Acute PPC members; plus
- (ii) AHCCCS Acute Prospective. █ % of Total Revenue (as defined below) attributable to PLAN'S enrolled AHCCCS Acute Prospective members; plus
- (iii) AHCCCS Title XIX Waiver Group PPC and Prospective. █ % of Total Revenue (as defined below) attributable to PLAN'S enrolled AHCCCS Title XIX Waiver Group PPC and Prospective members; plus
- (iv) DES/DDD. █ % of Total Revenue (as defined below) attributable to PLAN'S enrolled DES/DDD members; plus
- (v) ALTCS PPC. █ % of Total Revenue (as defined below) attributable to PLAN'S enrolled ALTCS PPC members; plus
- (vi) ALTCS. █ % of Total Revenue (as defined below) attributable to PLAN'S enrolled ALTCS members; plus
- (vii) Health Care Group (HCG). █ % of Total Revenue (as defined below) attributable to PLAN'S enrolled HCG members; plus
- (viii) Premium Sharing. █ % of Total Revenue (as defined below) attributable to PLAN'S enrolled Premium Sharing members; plus
- (ix) Pascua Yaqui Tribe. \$ █ PMPM for PLAN'S enrolled Pascua Yaqui members. This PMPM rate will increase at an annual percentage rate of █ ( ) percent on each May 1st of this Agreement beginning on May 1, 2003.

Above percentage and PMPM rates will be adjusted to reflect economies of scale based on the PLAN'S total enrollment (excluding AHCCCS Acute PPC and ALTCS PPC member months) on the first of each month:

Combined PLAN Enrollment  
(excluding AHCCCS Acute PPC  
and ALTCS PPC):

305,000+	█ % of above rates
285,000-304,999	█ % of above rates
265,000-284,999	█ % of above rates
245,000-264,999	█ % of above rates
225,000-244,999	█ % of above rates
205,000-224,999	█ % of above rates
185,000-204,999	█ % of above rates
165,000-184,999	█ % of above rates
145,000-164,999	█ % of above rates
125,000-144,999	█ % of above rates
105,000-124,999	█ % of above rates
85,000-104,999	█ % of above rates
65,000-84,999	█ % of above rates
45,000-64,999	█ % of above rates
25,000-44,999	█ % of above rates
<25,000	█ % of above rates

5.1(b) "Total Revenue" means all PLAN revenue (excluding any revenue collected for periods prior to the Effective Date), including: (i) capitation premiums; (ii) supplemental payments; (iii) reinsurance revenue; and (iv) third party liability ("TPL") collections. With respect to any revenue collected by PLAN after the Termination Date but within six months of the Termination Date, which relates to any time period on and after the Effective Date through the Termination Date, MANAGER shall be entitled to a Monthly Management Fee as calculated under Section 5.1(a), payable not later than thirty (30) days after such amounts are collected by PLAN.

5.1(c) The Monthly Management Fee will be invoiced to PLAN based on MANAGER'S best estimate of Total Revenue for the month. As soon as actual Total Revenue for the month is known (typically by the twentieth (20<sup>th</sup>) of the following month), MANAGER will calculate any necessary adjustment to the Monthly Management Fee. Any increase or decrease in the Monthly Management Fee shall be added to or deducted from, as the case may be, the following month's estimated Monthly Management Fee.

5.2 Annual Supplemental Compensation. Subject to the limitation described below, MANAGER is eligible for annual supplemental compensation of up to █ % of the aggregate Monthly Management Fees paid by PLAN to MANAGER under this Agreement per year, beginning with the fiscal year ending June 30, 2003, depending on the PLAN successfully achieving enrollment growth, exceeding budget, and managing utilization, quality and other appropriate benchmarks, the specifics of which will be agreed upon annually by PLAN and MANAGER. However, if PLAN and MANAGER cannot reach mutual agreement of such benchmarks within ninety (90) days after the beginning of the applicable fiscal year, the benchmarks in effect for the prior fiscal year will remain in effect for the new year. Exhibit A of

the Agreement (attached hereto) reflects a sample methodology to be mutually agreed upon by the parties prior to July 1, 2002, for the first fiscal year of this Agreement. MANAGER shall provide a request for such annual supplemental compensation as part of the report referred to in Section 2.1.d. of this Agreement. Such supplemental compensation payments are due to MANAGER from PLAN within 120 days of each fiscal year-end. Annual supplemental compensation, if any, to be paid under this Section 5.2 with respect to the final fiscal year of this Agreement shall be prorated based on the number of days in the final fiscal year in which this Agreement is in effect if this Agreement is terminated on other than June 30<sup>th</sup> of the year in which termination occurs.

The amount of the annual supplemental compensation, if any, shall be limited to the following maximum percentage depending on the PLAN'S financial performance for the related fiscal year:

PLAN's Net Income (Loss) [After Accrual of Monthly Management Fee and Annual Supplemental Compensation] As A Percent of Total Revenue	Maximum Percentage of Annual Supplemental Compensation As a Percent of Monthly Management Fee
[REDACTED] % and higher net income	[REDACTED] %
[REDACTED] %	[REDACTED] %
[REDACTED] %)	[REDACTED] %
[REDACTED] %) and larger net loss	[REDACTED] %

Notwithstanding the above, the maximum amount of annual supplemental compensation may not exceed \$ [REDACTED] for any single fiscal year. In addition, if the amount of the annual supplemental compensation causes the PLAN to incur a net loss and if the PLAN's actual loss from operations (adjusted for changes in explicit conservatism used in the claims reserve estimate) is a greater loss from operations than the Board-approved budget for any fiscal year, the MANAGER, if requested by the Board, agrees to waive its rights to the portion of the annual supplemental compensation otherwise earned pursuant to this Section for such fiscal year which results in the net loss. If the PLAN's enrollment (excluding AHCCCS Acute PPC and ALTCS PPC) increases to more than 244,999 enrollees, the parties agree to negotiate in good faith a new maximum amount under this paragraph.

## ARTICLE 6

### TERM AND TERMINATION

6.1 Term. The term of this Agreement shall be from the Effective Date through June 30, 2010, subject to earlier termination pursuant to Section 6.2 of this Agreement below. Thereafter, unless either PLAN or MANAGER gives the other 180 days prior written notice that this Agreement will be terminated, this Agreement shall automatically renew for successive one-

) year periods; provided however, that this Agreement may be terminated whether during or at the end of any such one-year renewal term, by giving the other 180 days prior written notice.

6.2(a) Early Termination Without Cause by Either PLAN or MANAGER; Notice of Termination; Termination Fee. Either PLAN or MANAGER may terminate this Agreement without cause upon 180 days prior written notice, which notice may not be given prior to January 1, 2007, such termination to become effective on the date specified in the notice ("Termination Date"), which shall not be less than 180 days after the notice is received by the other. Both PLAN and MANAGER are obliged to continue their performance under this Agreement until the Termination Date. If PLAN or MANAGER elects to terminate this Agreement pursuant to this Section 6.2(a), the terminating party shall pay the other party the Termination Fee pursuant to Section 6.3(a) of this Agreement.

) 6.2(b) Termination for Material Breach; Termination Fee. In the event of a Material Breach (as defined below) of this Agreement by either PLAN or MANAGER (each a "Breaching Party"), the other (the "Non-breaching Party") may terminate this Agreement upon at least 30 days prior written notice to the Breaching Party setting forth the reasons for termination. If the Breaching Party cures such Material Breach within 30 days of receipt of such notice to the reasonable satisfaction of the Non-breaching Party, the notice of termination shall be voided and this Agreement shall not terminate. However, cure of a Material Breach by a Breaching Party or waiver by the Non-breaching Party of a Material Breach or series of Material Breaches by the Breaching Party does not imply waiver by the Non-breaching Party of future Material Breaches by the Breaching Party. In addition, if a Breaching Party commits and thereafter cures the same Material Breach three times during any two-year period, then the fourth same Material Breach during that two-year period shall be deemed to be non-curable. If MANAGER elects to terminate this Agreement under this Section 6.2(b) due to a Material Breach by PLAN, PLAN shall pay MANAGER the Termination Fee pursuant to Section 6.3(a) of this Agreement. If this Agreement terminates due to a Material Breach by MANAGER under this Section 6.2(b), PLAN shall not be obligated to pay MANAGER the Termination Fee under Section 6.3(a) of this Agreement. For purposes of this Section 6.2(b), a Material Breach is defined as one or more of the following:

(1) Permanent cessation of business of the PLAN or MANAGER; or

(2) If either PLAN or MANAGER voluntarily files a petition under any Federal or state statute relating to bankruptcy, insolvency, arrangement or reorganization, or files an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or fails to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of PLAN or MANAGER, or if PLAN or MANAGER is adjudged as bankrupt, or if a trustee or receiver is appointed for it or its property, or if any substantial portion of its property becomes subject to the jurisdiction of a bankruptcy court, or if PLAN or MANAGER makes an assignment for the benefit of its creditors, or if there is an attachment, execution or other judicial seizure of any portion of PLAN'S or MANAGER'S assets and the seizure is not discharged within ten (10) days after its occurrence; or

(3) Commission of fraud or embezzlement related to this Agreement as deemed to have occurred as determined by a court of law having legal jurisdiction; or

(4) Failure to cure any breach or nonperformance, or to correct negligence in the performance of obligations set forth under this Agreement within 60 days following receipt of written notice that such breach, nonperformance or negligence has occurred, unless such breach, nonperformance or negligence is curable but cannot be cured within such 60-day period, in which case PLAN or MANAGER, as the case may be, shall not be deemed to be in Material Breach if it commences a cure within such 60-day period, diligently and continuously prosecutes the cure and actually cures the Material Breach.

Notwithstanding any other provisions of this Agreement, MANAGER shall not be in Material Breach if it is acting consistent with any directive from, or policies and procedures established by, or approved by, the Board.

Notwithstanding any other provisions of this Agreement, PLAN may immediately terminate this Agreement for cause without notice or opportunity to cure if MANAGER is excluded from a federal health care program or convicted of a crime relating to healthcare or a felony, or if MANAGER fails to remove an individual from providing services under this Agreement as required under Section 4.8.

6.2(c) Change in Control of PLAN. If there is a change in control of PLAN such that 50% or more of the assets or ownership interests in PLAN become owned by a third party unrelated to the entities which are the owner-organizations of PLAN as of the Effective Date of this Agreement (a "Change in Control"), either MANAGER or PLAN may terminate this Agreement upon one hundred eighty (180) days prior written notice of termination of this Agreement, as long as such notice is given within thirty (30) days following the Change in Control. If PLAN or MANAGER elects to terminate this Agreement pursuant to this Section 6.2(c), PLAN shall pay MANAGER the Termination Fee pursuant to Section 6.3(a) of this Agreement.

6.3(a) Termination Fee.

(i) If PLAN elects to terminate this Agreement pursuant to Section 6.2(a) or Section 6.2(c) of this Agreement or MANAGER elects to terminate this Agreement pursuant to Sections 6.2(b)(1), 6.2(b)(3), 6.2(b)(4), or 6.2(c) of this Agreement prior to June 30, 2010, then PLAN shall pay MANAGER a termination fee (the "Termination Fee") to compensate MANAGER for the substantial commitment of internal resources made by it to the Services provided under this Agreement (which commitment was based on the continuation of this Agreement through at least June 30, 2010), and for the use by the PLAN of other assets developed by MANAGER and used in providing Services under this Agreement (which was anticipated by MANAGER to continue through at least June 30, 2010), such as the manuals, clinical guidelines, work plans and materials, quality control and/or assurance programs, policies and procedures used by the PLAN, according to the following schedule:

- (A) If the Termination Date is on or before June 30, 2003, the Termination Fee shall be \$400,000.
- (B) If the Termination Date is after June 30, 2003, but on or before June 30, 2004, the Termination Fee shall be \$350,000.
- (C) If the Termination Date is after June 30, 2004, but on or before June 30, 2005, the Termination Fee shall be \$300,000.
- (D) If the Termination Date is after June 30, 2005, but on or before June 30, 2006, the Termination Fee shall be \$250,000.
- (E) If the Termination Date is after June 30, 2006, but on or before June 30, 2007, the Termination Fee shall be \$200,000.
- (F) If the Termination Date is after June 30, 2007, but on or before June 30, 2008, the Termination Fee shall be \$150,000.
- (G) If the Termination Date is after June 30, 2008, but on or before June 30, 2009, the Termination Fee shall be \$100,000.
- (H) If the Termination Date is after June 30, 2009, but before June 30, 2010, the Termination Fee shall be \$50,000.

If the Termination Date is on or after June 30, 2010, PLAN shall not pay MANAGER a Termination Fee. The Termination Fee, if any, shall be paid 50% on the date PLAN or MANAGER gives notice of termination and 50% on the Termination Date.

(ii) If MANAGER elects to terminate this Agreement pursuant to Section 6.2(a) of this Agreement before June 30, 2010, then MANAGER shall pay PLAN the Termination Fee set forth Section 6.3(a)(i)(F), 6.3(a)(i)(G) or 6.3(a)(i)(H), as applicable. Such Termination Fee shall be paid 50% on the date MANAGER gives notice of termination and 50% on the Termination Date.

6.3(b) Effects of Termination.

- (i) Upon notice of Termination of this Agreement, MANAGER and PLAN shall negotiate in good faith to provide for the wind-down of the PLAN and/or transition of Services to a successor manager.
- (ii) Upon Termination of this Agreement, PLAN agrees to reimburse MANAGER for the reasonable actual cost of winding down the PLAN and/or ceasing the delivery of Services hereunder, including but not limited to the reasonable, actual costs of severance for Manager Employees, Office Lease, Lease or License termination costs, if any, and other reasonable costs.

(A) In determining the amount of severance to be paid by PLAN upon Termination of this Agreement, MANAGER shall present to the Board the severance program for the termination of Manager Employees, the severance amounts to be paid to each of the PLAN'S CEO, CMO, COO (if any) and CFO, and the aggregate amount to be paid to other Manager Employees receiving severance payments. If PLAN disagrees with the reasonableness of the foregoing, it will be entitled to obtain a third party determination of its reasonableness from a qualified party satisfactory to PLAN and MANAGER. Such third party shall be unaffiliated with PLAN, MANAGER and their respective affiliates, and shall not have contracted with PLAN, MANAGER or any of their respective affiliates during the preceding two years. To the extent that such third party determines that the severance program, or the severance amount to be paid to any of the PLAN's CEO, CMO, COO (if any) or CFO, exceeds reasonable severance, PLAN shall be obligated to reimburse MANAGER only for the amount the third party determines to be reasonable.

(B) If the Office Lease or any subsequent office lease entered into by MANAGER during the term of this Agreement, any Lease or License, or any subsequent Lease or License entered into by MANAGER for the same or a similar item (including but not limited to managed care information systems hardware and software) has an unexpired term as of the Termination Date and is assignable to PLAN, MANAGER shall assign it to PLAN, and PLAN shall assume the remaining obligations thereunder, or if such Office Lease, subsequent office lease, Lease, subsequent Lease, License or subsequent License is terminable by MANAGER and PLAN elects to terminate it, PLAN shall pay the actual out-of-pocket costs of terminating such Office Lease, subsequent office lease, Lease, subsequent Lease, License or subsequent License (including the cost of deleting the PLAN from master leases and licenses held by MANAGER for the benefit of PLAN and other operations). The foregoing obligation to assign and assume shall apply to, and such termination costs shall be payable with respect to, any Office Lease, Lease or License entered into by PLAN prior to the Effective Date and assigned to MANAGER by PLAN. The foregoing obligation to assign and assume shall apply to, and such termination costs will also be payable with respect to, any subsequent office lease, subsequent Lease or subsequent License entered into after the Effective Date to the extent such subsequent office lease, subsequent Lease or subsequent License is approved by the Board at the time initially agreed to by MANAGER. If entering into a subsequent office lease, subsequent Lease or subsequent License requires approval under PLAN's Reserved Powers, but MANAGER does not obtain such approval, PLAN may reject the assumption or

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payment of termination costs by PLAN of, or with respect to, that portion of such subsequent office Lease, subsequent Lease or subsequent License that PLAN deems unreasonable. If a subsequent office lease, subsequent Lease or subsequent License not subject to PLAN's Reserved Powers is not approved by the Board at the time initially executed by MANAGER, PLAN shall assume it, or the termination charges payable with respect to it shall be paid by PLAN, to the extent the subsequent office lease, subsequent Lease or subsequent License to be assumed, or the termination costs related a subsequent office lease, subsequent Lease or subsequent License, as the case may be, is determined by the Board at the time of the Termination of this Agreement to have been reasonable when it was initially agreed to by MANAGER; provided, however, that if the Board does not determine that a particular subsequent office lease, subsequent Lease or subsequent License, or the termination cost for a particular subsequent office lease, subsequent Lease or subsequent License, as the case may be, is reasonable, the Board shall obtain a third party determination of the reasonableness thereof, or of the cost from a qualified party satisfactory to PLAN and MANAGER. Such third party shall be unaffiliated with PLAN, MANAGER and their respective affiliates, and shall not have contracted with PLAN, MANAGER or any of their respective affiliates during the preceding two years. If such third party determines that a subsequent office lease, subsequent Lease or subsequent License is not reasonable, PLAN shall not be obligated to assume it, and to the extent that such third party determines that the termination cost agreed to by MANAGER for a particular subsequent office lease, subsequent Lease or subsequent License exceeds reasonable costs, PLAN shall be obligated to reimburse MANAGER only for the amount the third party determines to be reasonable.

- )
- (iii) Upon Termination of this Agreement, PLAN shall purchase the furniture, fixtures and equipment (including telephones, copiers, personal computers and fax machines) then owned by MANAGER and used in its operation of PLAN as may be designated by MANAGER for purchase by PLAN (the "Termination Assets"), for the MANAGER'S depreciated book value of the Termination Assets.
  - (iv) Upon Termination of this Agreement on or before June 30, 2010, other than a termination by PLAN pursuant to Section 6.2(b) of this Agreement, PLAN shall pay MANAGER that portion of the sum of \$1,600,000 relating to MANAGER's reimbursement of deferred charges which is then unamortized, as provided on the amortization schedule included as Exhibit B to this Agreement based on the month of termination.
- )

- (v) In addition to any Termination Fee due MANAGER pursuant to Section 6.3(a) of this Agreement, PLAN shall immediately, on the Termination Date, pay MANAGER any unpaid Monthly Management Fees due MANAGER pursuant to Section 5.1(a) of this Agreement and any unpaid reimbursements due MANAGER under this Agreement, except as provided for under Section 6.4 of this Agreement.
- (vi) Notwithstanding the foregoing, if requested by the PLAN in writing not more than fifteen (15) days after notice of termination is given, then commencing on the Termination Date and continuing for the period so requested by the PLAN, but not longer than six months following the Termination Date, MANAGER shall continue to perform claims adjudication services pursuant to Section 2.2.g., capitation management services pursuant to Section 2.2.h, encounter submission services pursuant to Section 2.2.k. and information services pursuant to Sections 2.2.m., 2.2.n. and 2.2.o. of the Agreement. MANAGER agrees to charge PLAN the same amount internally charged/allocated by MANAGER's shared services departments against this Agreement immediately before the Termination Date.

6.4 Month-end and Year-end Reports. MANAGER shall furnish all of the reports required under Sections 2.1.c. and d. or any other provision of this Agreement relating to the final month and year or portion thereof ending on the Termination Date of this Agreement, which reports shall be furnished within the time periods specified in Sections 2.1.c and d. or as otherwise provided in this Agreement notwithstanding the fact that the time period for delivery of such reports occurs subsequent to the Termination Date of this Agreement. PLAN may withhold an amount not to exceed \$75,000 from payments due MANAGER pursuant to Section 6.3(b) of this Agreement until such time as all reports for month-end and year-end or portion thereof required under this Agreement are furnished to PLAN by MANAGER.

## ARTICLE 7

### CONFLICT OF INTEREST

PLAN acknowledges that in addition to providing services to the PLAN pursuant to this Agreement, MANAGER and its affiliates engage in broad-based and diverse medical management and consulting, which may from time to time result in MANAGER'S being involved in potential and actual conflicts of interest in performing its duties pursuant to this Agreement. In the event of a potential conflict of interest or any actual conflict of interest, MANAGER shall (a) not disclose to PLAN, nor to the other party, any confidential or proprietary information of the other party, (b) not treat any party less favorably than it would if the potential or actual conflict of interest were not present, and (c) notify the Board and the PLAN owner-organizations and afford the Board and the PLAN owner-organizations an opportunity to approve or disapprove possible arrangements in Arizona between MANAGER

) and other parties for the purpose of managing another prepaid health plan contracted with AHCCCS in the State of Arizona.

PLAN acknowledges that Schaller Anderson, Incorporated (SAI) currently has a contract with Community Medical and Dental Plan ("CMDP") for consulting services in connection with CMDP's provision of AHCCCS medical and dental services to foster children. SAI has entered into a subcontract with SAA for the performance of certain services under its contract with CMDP. PLAN does not deem such contract or subcontract, nor will it deem any subsequent contract or subcontract, to create a conflict of interest with this Agreement.

PLAN and MANAGER acknowledge and agree that notwithstanding any other provision of this Agreement, MANAGER shall have no responsibility whatsoever with respect to determining whether any director serving on the Board has any direct or indirect financial interest or investment in the PLAN, any department thereof, or any contractor providing goods or services to the PLAN and shall not be required to disclose any such relationship to any third party, including without limitation AHCCCS.

PLAN and MANAGER each represents and warrants to and covenants with the other that as of the Effective Date there is no, and during the term of this Agreement there will be no, cross ownership or control between MANAGER and its affiliates, on the one hand, and PLAN and its owner-organizations and their respective affiliates, on the other hand.

) If MANAGER intends to enter into any financial arrangement to which PLAN is a party with any entity related to MANAGER or with which MANAGER has a contract or financial relationship, MANAGER will disclose the financial relationship or existence of the contract to PLAN. MANAGER shall not enter into the financial arrangement on behalf of PLAN without first obtaining the approval of the Board, except in those cases where the financial arrangement is included in a budget previously approved by PLAN. The foregoing requirement, however, will not apply to (a) MANAGER's entering into an agreement on behalf of PLAN with a provider at PLAN's standard fee schedule or the AHCCCS fee schedule and on standard terms and conditions approved by the Board in advance of being entered into, or (b) the renewal of a contract with a provider as long as MANAGER determines prior to such renewal that such renewal is at the fair market value for the services being contracted for and is in the best interests of PLAN.

## ARTICLE 8

### INDEMNIFICATION; INSURANCE

) 8.1 Indemnification by PLAN. PLAN shall defend, indemnify and hold harmless MANAGER from and against any claims, demands, losses, damages, expenses (including attorneys' fees), liabilities or causes of action of any kind, asserted or brought by anyone, alleged to have resulted in whole or in part from (a) any negligent, fraudulent or intentional acts, omissions or errors of PLAN and/or its employees, representatives, or agents in performing its duties under this Agreement, (b) PLAN'S provision of any erroneous data, data files, or other

information to MANAGER, unless such data, data files, or other information was prepared according to or under the direction of MANAGER, (c) any negligent, fraudulent, or intentional acts, omissions, or errors of PLAN and/or its employees, representatives, or agents in violation of federal or state laws or regulations of any nature, (d) any severance obligations, related to PLAN personnel whose employment is terminated by the PLAN, and (e) any medical malpractice or other tort claims asserted against MANAGER or any of its affiliates.

8.2 Indemnification by MANAGER. MANAGER shall defend, indemnify and hold harmless PLAN from and against any claims, demands, losses, damages, expenses (including attorneys' fees), liabilities or causes of action of any kind, asserted or brought by anyone, alleged to have resulted in whole or in part from (a) any negligent, fraudulent or intentional acts, omissions or errors of MANAGER and/or its employees, representatives, or agents in performing the Services or any other duties of MANAGER under this Agreement, and (b) any negligent, fraudulent, or intentional acts, omissions, or errors of MANAGER and/or its employees, representatives, or agents in violation of federal or state laws or regulations of any nature.

8.3 Notice and Defense of Claims. PLAN and MANAGER shall notify each other promptly of commencement of or indication that any claim may be asserted against any indemnified party or of any litigation or proceedings against it or any of its officers, directors, or trustees, as appropriate, of which it may be advised which could give rise to a claim by any indemnified party. The indemnitor shall be entitled to participate in the defense of any such action at its own expense, but such defense shall be conducted by counsel of recognized standing and reasonably satisfactory to the indemnified party. The indemnitor will furnish to the indemnified party copies of all pleadings in any action hereunder, permit the indemnified party to be an observer therein, and apprise the indemnified party of all material developments therein, all at the indemnitor's expense.

8.4 PLAN's Insurance. At PLAN's expense, from the Effective Date through the Termination Date of this Agreement, the PLAN shall maintain the following insurance coverages, all of which shall be arranged for and procured by MANAGER from the same insurance carriers used by MANAGER for its insurance coverages:

a. Commercial General Liability (If it remains the responsibility of PLAN to provide CGL insurance relative to the PLAN's premises, MANAGER shall reimburse PLAN for this expense):

\$2,000,000	Products/Completed Operations Aggregate
\$2,000,000	General Aggregate
\$1,000,000	Any One Occurrence
\$1,000,000	Any One Person or Organization

b. Managed Care Errors & Omissions and Directors & Officers Liability Insurance:

\$5,000,000	Per Occurrence for each coverage
\$5,000,000	Annual Aggregate for each coverage

If PLAN'S coverage is on a "claims made" basis, upon termination of this Agreement, or in the event that PLAN changes insurance carriers during the term of this Agreement, PLAN shall maintain or obtain prior acts coverage or purchase optional extended reporting period (e.g. "tail") coverage to ensure that coverage in the required amount is maintained for claims made at any time related to an occurrence during the term of this Agreement.

MANAGER will be named as an Additional Insured on the Commercial General Liability coverage, if applicable. PLAN shall furnish MANAGER with Certificates of Insurance, which certify that PLAN has the required insurance coverage and additional insured endorsements. The insurance coverage will be written with insurers with Best's Ratings that are acceptable to MANAGER. Such coverage will include a provision to provide MANAGER with 30 days notice of cancellation or any material changes in coverage.

8.5 MANAGER's Insurance. MANAGER shall obtain and pay for, from the Effective Date through the Termination Date of this Agreement, the following insurance coverages:

a. Commercial General Liability:

\$2,000,000	Products/Completed Operations Aggregate
\$2,000,000	General Aggregate
\$1,000,000	Any One Occurrence
\$1,000,000	Any One Person or Organization

b. Commercial Auto Liability

\$1,000,000	Each Accident
-------------	---------------

c. Managed Care Errors & Omissions and Directors & Officers Liability Insurance

\$5,000,000	Per Occurrence for each coverage
\$5,000,000	Annual Aggregate for each coverage

If MANAGER's coverage is on a "claims made" basis, upon termination of this Agreement, or in the event that MANAGER changes insurance carriers during the term of this Agreement, MANAGER shall maintain or obtain prior acts coverage or purchase optional extended reporting period (e.g. "tail") coverage to ensure that coverage in the required amount is maintained for claims made at any time related to an occurrence during the term of this Agreement.

d. Employers Liability

\$100,000	Each Accident
\$100,000	Each Employee for Injury by Disease
\$500,000	Aggregate for Injury by Disease

e. Commercial Crime

\$500,000      Each Occurrence

ARTICLE 9

NOTICES

Any notice or other communication required or permitted by this Agreement shall be in writing and shall be given, and be deemed to have been given, if (a) delivered personally, (b) mailed, postage prepaid, return receipt requested, registered or certified mail, (c) deposited with any nationally-recognized overnight courier service with fees prepaid, for overnight delivery, or (d) sent by machine confirmed facsimile followed by originals delivered or sent in accordance with (a), (b) or (c), above, within three (3) days of facsimile transmission, addressed to a party at the address set forth below or such other address as the party may designate in writing in a notice duly given pursuant to this Article:

If to MANAGER:

Schaller Anderson of Arizona, L.L.C.  
Post Office Box 61628  
Phoenix, Arizona 85082-1628  
Attention: Joseph P. Anderson  
SAI CEO & Chairman  
Telephone: (602) 659-2031  
Facsimile: (602) 659-1322

If to PLAN:

Southwest Catholic Health Network Corporation  
Attention: Michael Erne, CEO  
Catholic Healthcare West – Southwest Division  
350 West Thomas Road  
Phoenix, Arizona 85013  
Telephone: (602) 406-6636  
Facsimile: (602) 406-7143

And to:

Southwest Catholic Health Network Corporation  
Attention: William Finlayson, CEO  
Carondelet Health Network  
1601 West St. Mary's Road  
Tucson, Arizona 85745  
Telephone: (520) 620-4873  
Facsimile: (520) 620-4852

And to: Southwest Catholic Health Network Corporation  
Attention: Msgr. Edward Ryle  
Arizona Catholic Conference  
3033 North 3<sup>rd</sup> Avenue, 3<sup>rd</sup> Floor  
Phoenix, Arizona 85013  
Telephone: (602) 257-6330  
Facsimile: (602) 256-1356

## ARTICLE 10

### MISCELLANEOUS

10.1 Assignment. A party to this Agreement shall not assign this Agreement to any entity other than an entity that acquires all or substantially all of the assets or stock of the party, except with the prior written consent of the other parties, which consent may be withheld by such other party in its sole and absolute discretion.

10.2 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

10.3 Severability. Should any part of this Agreement be deemed invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement.

10.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one agreement.

10.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Arizona.

10.6 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the transactions contemplated hereby, and no amendment or modification may be made unless in writing and signed by each of the parties.

10.7 Time of the Essence. The parties agree that time is of the essence with respect to all provisions of this Agreement.

10.8 Change in Circumstances. If (a) Medicare, Medicaid, any third party payor or any federal, state or local legislative or regulatory authority adopts any law, rule, regulation, policy, procedure or interpretation thereof that establishes a material change in the method or amount of reimbursement or payment for services under the PLAN, or (b) any or all such payors/authorities, such as AHCCCS, impose requirements that require a material change in the manner of the PLAN's or MANAGER's operations under this Agreement and/or costs related thereto, then, upon the request of the party materially affected by any such change in circumstances, PLAN and MANAGER shall enter into good faith negotiations for the purpose of

) establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements, and change of circumstances while preserving the original intent of this Agreement to the greatest extent possible.

10.9 Termination or Amendment as a Result of Tax Status Issues. The parties acknowledge and agree that this Agreement is intended to not jeopardize the status of the PLAN and its owner-organizations as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("Tax-Exempt Status"). Notwithstanding any other provision of this Agreement, PLAN shall have the right to terminate or unilaterally amend this Agreement without liability or penalty (except that PLAN shall make the payments provided for in Section 6.3(b)), if either (a) the Internal Revenue Service determines that the terms of this Agreement jeopardize the Tax-Exempt Status of PLAN or its owner-organizations, or (b) in the opinion of tax counsel selected by PLAN and reasonably acceptable to MANAGER, the terms of this Agreement more likely than not jeopardize the Tax-Exempt Status of PLAN or its owner-organizations. Notwithstanding PLAN's right to terminate, PLAN shall first use its reasonable efforts to amend this Agreement only to the extent necessary to avoid jeopardizing such Tax-Exempt Status, and will only terminate this Agreement pursuant to this Section if it determines, in its reasonable judgment, that an amendment cannot be obtained or will not result in compliance with Section 501(c)(3). MANAGER shall have the right to consent to any amendment proposed pursuant to this Section or any amendment unilaterally made by the PLAN, but MANAGER shall not unreasonably withhold its consent. If MANAGER reasonably withholds its consent to an amendment proposed or unilaterally made pursuant to this Section, then this Agreement shall terminate under the terms of this Agreement prior to such proposed or unilateral amendment. The parties agree that MANAGER's withholding of consent shall be deemed reasonable if the proposed or unilateral amendment would result in a material adverse economic effect on MANAGER.

10.10 Survivability. Subsequent to the termination of this Agreement, PLAN and its respective successors and assigns (whether by deliberate act or operation of law) shall continue to be jointly and severally obligated to pay MANAGER any unpaid amounts due MANAGER during the term of this Agreement. PLAN shall remain obligated beyond termination of this Agreement to obtain adequate "tail" insurance as required by Section 8.4 of this Agreement. In addition, the indemnification provisions delineated in Article 8 of this Agreement, shall continue in force beyond termination of this Agreement. Additionally, MANAGER shall perform all obligations required under this Agreement relating to time periods during the term of this Agreement, including the preparation and delivery of reports after the Termination Date relating to such time periods.

10.11 Force Majeure. A party shall be excused from performance of this Agreement to the extent it is unable to perform this Agreement due to strikes, riots, acts of God, shortages of labor or materials, national emergency, acts of a public enemy, governmental restrictions, laws or regulations, or any other cause or causes, whether similar or dissimilar to those enumerated, beyond its reasonable control.

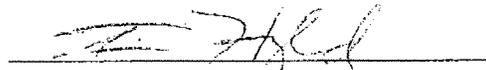
) IN WITNESS WHEREOF, the parties have entered into this Agreement effective upon the approval of the Arizona Health Care Cost Containment System.

SOUTHWEST CATHOLIC HEALTH NETWORK CORPORATION:

  
By: Msgr. Edward J. Ryle Date: 4/11/02  
Its: Acting Chairman

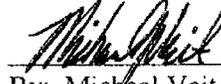
SCHALLER ANDERSON OF ARIZONA, L.L.C.:

By: Schaller Anderson, Incorporated, its Manager

  
By: Timothy J. Hyland Date: 4/11/02  
Its: Senior VP, CFO

APPROVED BY:

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM:

  
By: Michael Veit Date: APR 11 2002  
Its: Contracts and Purchasing Administrator

Schaller Anderson of Arizona, LLC

**Sample Methodology for Annual Supplemental Compensation**

**For the Year Ending June 30, 2003 ("FY '03")**

The decision to market and position the PLAN as Arizona's premier prepaid health plan under the Arizona Health Care Cost Containment System ("AHCCCS") has had significant impact on the utilization and types of services that would routinely be expected in a plan of its size. The PLAN has attracted a disproportionate number of chronically ill AHCCCS members due to the compassionate reputation of the PLAN and the commercial HMOs' market penetration of the healthier populations. Because of this demonstrable adverse selection, benchmarking for annual supplemental compensation must reflect the unusual composition of the PLAN'S membership. The PLAN has a much higher percentage of members with conditions such as HIV-Aids, childhood cancers and hemophilia than the statistical norm for the AHCCCS population. These conditions require more repeat hospitalizations and more extensive medical services than the actuarial models used to predict utilization for the AHCCCS population.

MANAGER proposes the following benchmarks serve as the initial performance measures for annual supplemental compensation. MANAGER believes its commitment to the continuous quality improvement process is the foundation of an effective annual supplemental compensation program. MANAGER has proposed benchmarks at levels that are realistic, but are not easily achievable, considering the PLAN'S membership and history.

Pursuant to Section 5.2 of the Agreement, the parties shall mutually agree upon the final annual supplemental compensation program by June 30, 2002 for the fiscal year ending June 30, 2003.

FY '03 Sample Performance Measures and Benchmarks

**PLAN Operating Income (Loss) Compared to Budget** - A benchmark budget for the fiscal year is operating income (loss) of \$ [REDACTED]. The budgeted operating income (loss) will be adjusted for any changes in claims reserves margins for purposes of this computation.

**Paid Days per Thousand.** - A benchmark of [REDACTED] paid days per thousand for paid days per [REDACTED] appears to be a reasonable benchmark.

**C-Section Rate** – The PLAN’S year-to-date experience for C-sections is 24% with monthly data ranging from 22% to 26%, which appears to be a reasonable benchmark.

**Adequate Prenatal Care** – AHCCCS defines inadequate prenatal care as less than five prenatal visits. The ability to increase the number of prenatal care visits, thus reducing the incidence of inadequate prenatal care, will be the basis of this benchmark. Currently 80% of the PLAN’S pregnant population receives 5 or more prenatal visits. The goal is to increase the percentage of members who have had at least 5 prenatal visits for those pregnant members enrolled in the PLAN at least 150 days prior to their delivery date.

**Member Satisfaction Surveys** – Member satisfaction will be evaluated using a member survey process (developed and mutually agreed upon by the Board and MANAGER), which queries members to determine satisfaction levels. The calculation to determine overall satisfaction levels will be based upon completed and returned surveys from a random selection of 500 enrollees contacted by mail. The survey process will be completed during the fiscal year. The specific satisfaction thresholds will be evaluated based on responses to the following question, included within the survey:

I would describe my satisfaction with Mercy Care Plan to friends and family as:

- Excellent
- Very Good
- Good
- Fair
- Poor
- Don’t Know

Responses of Excellent, Very Good and Good will be counted as satisfied. Responses of Fair and Poor will be counted as unsatisfied. Responses of Don’t Know will be neutral and excluded from the calculation. The benchmark is that 85% or more of the respondents should indicate a satisfied response.

**Provider Satisfaction Survey** – This measure will be evaluated using a provider survey process (developed and mutually agreed upon by the Board and MANAGER), which queries providers to determine satisfaction levels. The calculation to determine overall satisfaction levels will be based upon completed and returned provider surveys only. The survey process will be completed following the first fiscal year, when providers will be sent the survey. The specific

) satisfaction thresholds will be evaluated based on the response to the following question, included within the survey.

Overall, how would you rate Mercy Care Plan compared to other AHCCCS plans?

Excellent  
Very Good  
Good  
Fair  
Poor  
Don't Know

Responses of Excellent, Very Good and Good will be counted as Satisfied. Responses of Fair or Poor will be counted as Unsatisfied. Responses of Don't Know will be neutral and excluded from the calculation. The benchmark is that 80% or more of the respondents should indicate a satisfied response.

**Year End Enrollment** – Enrollment will be evaluated based upon achieving 190,000 members (excluding AHCCCS Acute PPC and ALTCS PPC members) in the PLAN by July 1, 2003

) **Claims Adjudication Timeliness** – The efficiency of the claims adjudication process will be evaluated using the timeliness of claims payment as the main criteria. In-network claims that require no additional information from the provider of services or from a third party will provide the benchmark for the efficiency of the claims processing system. The benchmark is that 95% of all clean claims shall be adjudicated within 30 days of receipt by MANAGER.

**Claims Payment Accuracy** – The MANAGER'S audit section will develop a statistically valid sample size of paid claims, selected at random, to determine the accuracy of the claims payment. Each claim will be recalculated using the information from the provider's contract and the fee schedule in effect on the date of service. The benchmark is that 95% of all clean claims will have been paid correctly.

**FY '03 Sample Performance  
Measures and Benchmarks**

	<b>Benchmark</b>	<b>Threshold 33%</b>	<b>67%</b>	<b>Maximum 100%</b>	<b>Supplemental Compensation As a % Of the Monthly Management Fee</b>
Financial Performance Paid Days per Thousand					
C-section Rate	24%	23.8%	22.4%	21.6%	
Adequate Prenatal Care	80.0%	80.67%	81.33%	82.0%	
Member Satisfaction	85.0%	85.5%	86.0%	86.5%	
Provider Satisfaction	80.0%	80.67%	81.33%	82%	
Year End Enrollment (on 7/1/03)	190,000	193,333	196,667	200,000	
Claims Adjudication Timeliness	95.0%	96.0%	97.0%	98.0%	
Claims Payment Accuracy	95.0%	96.0%	97.0%	98.0%	
Maximum					

EXHIBIT B  
AMORTIZATION SCHEDULE FOR DEFERRED CHARGES  
[per Section 6.3(b)(iv)]

Fiscal Year Ending June 30 (\$ in 000s):

	2003	2004	2005	2006	2007	2008	2009	2010
July								
August								
September								
October								
November								
December								
January								
February								
March								
April								
May								
June								

FIRST AMENDMENT TO THE  
PLAN MANAGEMENT SERVICES AGREEMENT

THE PLAN MANAGEMENT SERVICES AGREEMENT, with an effective date of May 1, 2002, (the "Agreement"), by and between Southwest Catholic Health Services Network Corporation (dba Mercy Care Plan and Mercy Healthcare Group) ("MCP"), and Schaller Anderson of Arizona, L.L.C., ("SAA"), is hereby amended by this FIRST AMENDMENT TO THE PLAN MANAGEMENT SERVICES AGREEMENT ("First Amendment") as of March 18, 2005.

WHEREAS, MCP wishes to apply to the Center for Medicare and Medicaid Services ("CMS") to become a Medicare Advantage Special Needs Plan (the "SNP Plan") starting January 1, 2006.

WHEREAS, MCP wishes SAA to manage the SNP Plan in conjunction with SAA's current management of MCP subject to terms and conditions to be negotiated in good faith at a later date when more information about the SNP Plan is known.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, MCP and SAA hereby amend the Agreement as follows:

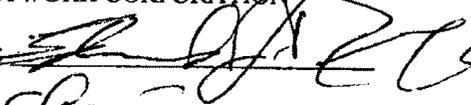
1. In the event MCP executes a SNP Plan contract with CMS during the term of the Agreement, ~~MCP~~ shall manage the SNP Plan subject to the relevant terms and conditions of the Agreement, terms and conditions to be negotiated in good faith at a later date when more information about the SNP Plan is known, and subject to Attachment E hereto. In the event of conflict between or among any or all of those terms and conditions, Attachment E shall govern.

2. Except as expressly modified by this First Amendment, the Agreement shall remain in full force and effect.

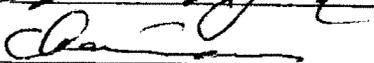
THIS FIRST AMENDMENT TO THE PLAN MANAGEMENT SERVICES AGREEMENT is hereby entered into this 18<sup>th</sup> day of March, 2005.

SOUTHWEST CATHOLIC HEALTH  
NETWORK CORPORATION

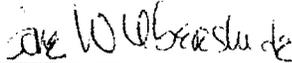
SCHALLER ANDERSON  
OF ARIZONA, L.L.C.

By: 

By: SCHALLER ANDERSON, INCORPORATED

Its: 

Its: Manager

By: 

Its: Sr. Vice President & CFO

ATTACHMENT E  
to  
MERCY CARE PLAN PLAN MANAGEMENT SERVICES AGREEMENT  
  
REQUIRED TERMS AND CONDITIONS  
for  
MEDICARE ADVANTAGE SPECIAL NEEDS PLAN

This Attachment E, along with the other terms and conditions of the Plan Management Services Agreement with MERCY CARE PLAN (defined below as the "PMSA Agreement"), sets forth the terms and conditions which are required for and apply to the Mercy Care Medicare Advantage Special Needs Plan (defined below as the "Mercy Care SNP"). This Attachment E is to ensure compliance with the Medicare Advantage program laws, rules, and regulations. For purposes of plan management services for Members enrolled in the Mercy Care SNP, if a term or condition of this Attachment E conflicts with a term or condition in the PMSA Agreement (including any other attachment), this Attachment E shall govern.

**I. DEFINITIONS**

The following terms shall have the meaning described below for purposes of the Mercy Care SNP. Capitalized terms not otherwise defined below shall have the meaning described elsewhere in the PMSA Agreement.

**CMS** means the Centers for Medicare and Medicaid Services, an administrative agency of the United States Government, responsible for administering the Medicare program.

**CMS Contract** means the Medicare Advantage (formerly Medicare +Choice) contract between Southwest Catholic Healthcare Network Corporation d/b/a MERCY CARE PLAN and CMS.

**Mercy Care SNP** means the Medicare Advantage plan operated by MERCY CARE PLAN under the CMS Contract and pursuant to Section 231 of the Medicare Modernization Act of 2003, which allows MERCY CARE PLAN to serve certain special needs Medicare beneficiaries, including without limitation those who are dually eligible for Medicare and Medicaid.

**Mercy Care SNP Members** means Members who are enrolled in the Mercy Care SNP.

**Plan Manager** means Schaller Anderson of Arizona, L.L.C., which contracts with MERCY CARE PLAN to operate and provide day-to-day management of MERCY CARE PLAN pursuant to the PMSA Agreement.

**PMSA Agreement** means the Agreement and any attachments, addenda, amendments, and items incorporated by reference, between PLAN MANAGER and MERCY CARE PLAN for the day-to-day management and operation of MERCY CARE PLAN.

## **II. DUTIES OF PLAN MANAGER**

- 2.1 PLAN MANAGER shall render plan management services for the Mercy Care SNP in a manner consistent and compliant with the following:
  - 2.1.1 The CMS Contract, which MERCY CARE PLAN shall provide a copy of to PLAN MANAGER;
  - 2.1.2 Title XVIII of the Social Security Act (Medicare) and the regulations adopted thereunder and regulations and instructions published by CMS for the Medicare Advantage program; and
  - 2.1.3 MERCY CARE PLAN Policies that apply to services for Mercy Care SNP Members.
- 2.2 PLAN MANAGER shall ensure that any employees who provide services for Mercy Care SNP are aware of and adhere to the terms and conditions of this Attachment E. If PLAN MANAGER is authorized under the PMSA Agreement to subcontract its obligation for services under the PMSA Agreement to others, PLAN MANAGER shall ensure that all provisions of the CMS Contract which are applicable to PLAN MANAGER's subcontractors, including the terms and conditions of this Attachment E, are included in PLAN MANAGER's subcontracts.
- 2.3 PLAN MANAGER shall meet the standards for participation and all applicable requirements to provide plan management services under the Medicare or Medicaid program, including without limitation the following:
  - 2.3.1 The right of MERCY CARE PLAN or federal and state regulatory agencies, including without limitation the federal Department of Health and Human services, the federal Comptroller General of the General Accounting Office, and the AHCCCS Administration or any of their designees, to inspect, evaluate or audit PLAN MANAGER's books, contracts, medical records, and other documentation related to PLAN MANAGER's provision of and reimbursement for services to Mercy Care SNP under this Attachment E. PLAN MANAGER acknowledges that the right to inspect, evaluate or audit shall exist for a period of not less than six (6) years from (1) the end of the contract period under the CMS Contract or (2) from the date of completion of any audit, whichever is later.
  - 2.3.2 The obligation of MERCY CARE PLAN to retain all books, contracts, medical records, and other documentation related to performance under the CMS Contract for a period of not less than ten (10) years from (1) the end of the contract period under the CMS Contract or (2) from the date of completion of any audit, whichever is later.

- 2.3.3 The obligation to make available PLAN MANAGER's premises, physical facilities, equipment, records, and other information that CMS may require to evaluate PLAN MANAGER's services for Mercy Care SNP. The preceding shall include without limitation that PLAN MANAGER cooperate with the activities or requests of any external quality review or quality improvement organization identified by MERCY CARE PLAN for the provision of Covered Services to Mercy Care SNP Members.
- 2.3.4 The obligation to deliver plan management services to Mercy Care SNP following federal and state laws, rules, and regulations applicable to individuals and entities receiving federal funds, including without limitation Title VI of The Civil Rights Act of 1964, The Age Discrimination Act of 1975, The Americans With Disabilities Act and The Rehabilitation Act of 1973, since payment to PLAN MANAGER from MERCY CARE PLAN for plan management services to Mercy Care SNP is derived, in whole or in part, from federal funds received by MERCY CARE PLAN from CMS.
- 2.3.5 The obligation to represent that PLAN MANAGER employees, subcontractors, or independent contractors that provide or will provide plan management services pursuant to the PMSA Agreement, including without limitation, utilization review, medical social work, or administrative services, maintain full participation status in the Medicare program and are not excluded from participation in it.
- 2.4 In no event including without limitation nonpayment by MERCY CARE PLAN or its insolvency or breach of this Agreement, shall PLAN MANAGER bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a Mercy Care SNP Member for Covered Services. The preceding shall not prohibit PLAN MANAGER from collecting from a Mercy Care SNP Member any authorized coinsurance, deductible, or Co-payments. The preceding shall be construed for the benefit of the Member and supercedes any oral or written agreement to the contrary now existing or entered into in the future between PLAN MANAGER and a Mercy Care SNP Member or person(s) acting on the Member's behalf.
- 2.5 PLAN MANAGER shall maintain enrollment, billing and reimbursement information with respect to Members (collectively, "Member Information") in a manner consistent with professionally recognized standards. In addition, PLAN MANAGER shall: (i) Abide by all Applicable Law regarding confidentiality and disclosure of Member Information; (ii) safeguard the privacy of any information that identifies a particular Member; (iii) have procedures that specify for what purposes PLAN MANAGER will use Member Information and to whom and for what purposes PLAN MANAGER will disclose it; (iv) release Member Information only as required or permitted by Applicable Law; (v) maintain

Member records in an accurate and timely manner; and (vi) provide Members timely access to the records and information that pertain to them.

- 2.6 PLAN MANAGER shall cooperate with MERCY CARE PLAN 's procedure to develop, compile, evaluate, and report to CMS, Mercy Care SNP Members, and the general public as required by CMS. Such cooperation and reporting shall be conducted in a manner that safeguards patient confidentiality and may include without limitation statistical information pertaining to the following: utilization of Covered Services; availability, accessibility, and acceptability of Covered Services; developments in the health status of Members; and other matters that CMS may require.
- 2.7 PLAN MANAGER shall maintain and implement MERCY CARE PLAN's written policies and procedures for Advance Directives as required under the CMS Contract for Mercy Care SNP to comply with the Patient Self - Determination Act (Section 4751 of the Omnibus Reconciliation Act of 1990), as amended, and other appropriate laws, including without limitation State law on Advance Directives. For purposes of this Attachment E, an Advance Directive is a Member's written instructions, recognized under State law, relating to the provision of health care when the Member is not competent to make health care decisions as determined under State law. Examples of Advance Directives are living wills and durable powers of attorney for health care.
- 2.8 PLAN MANAGER shall not unlawfully discriminate against any of its employees or applicants for employment or against any Members on the basis of race, color, creed, national origin, ancestry, religion, sex, marital status, age (except as allowed by Applicable Law), or physical or mental handicap. PLAN MANAGER shall ensure that the evaluation and treatment of their employees and applicants for employment and of Members are free of such discrimination. PLAN MANAGER shall comply with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000d et. Seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794) and the regulations thereunder, Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Section 1681 et. Seq.), the Age Discrimination Act of 1975, as amended (42 U.S.C. Section 6101 et. Seq.), Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended (42 U.S.C. Section 9849), the Americans With Disabilities Act (P.L. 101-365) and all implementing regulations, guidelines and standards as are now or may be lawfully adopted under the above statutes. PLAN MANAGER acknowledges that CMS requires compliance with the preceding as a condition of participation in the Mercy Care SNP.
- 2.9 PLAN MANAGER acknowledges that MERCY CARE PLAN may only delegate certain activities to PLAN MANAGER if the requirements of this Section 2.9 are followed. In the event that MERCY CARE PLAN delegates an administrative activity to PLAN MANAGER that may impact Mercy Care SNP Members or services provided or available to them, PLAN MANAGER agrees to the

following:

- 2.9.1 The delegated activities shall be described in a writing that becomes part of the PMSA Agreement and which specifies that PLAN MANAGER shall perform the activity in a manner consistent with the CMS Contract.
- 2.9.2 MERCY CARE PLAN shall monitor PLAN MANAGER's performance of the delegated activity on an ongoing basis and may modify, suspend or revoke the delegated administrative activity in the event MERCY CARE PLAN or CMS determines in their discretion that PLAN MANAGER is not meeting or has failed to meet its obligations related to the delegated administrative activity.
- 2.9.3 PLAN MANAGER may not sub-delegate an administrative activity delegated to it by MERCY CARE PLAN without the prior written approval of MERCY CARE PLAN and following the requirements of this Section 2.9.
- 2.9.4 The credentials of medical professionals providing Covered Services to Mercy Care SNP Members pursuant to this Attachment E will be either reviewed by MERCY CARE PLAN or, if agreed to by MERCY CARE PLAN and PLAN MANAGER, will be delegated to PLAN MANAGER under a process approved by MERCY CARE PLAN and monitored by it on an ongoing basis.

### **III. Other Provisions**

- 3.1 MERCY CARE PLAN shall require that PLAN MANAGER use CMS Contract and MERCY CARE PLAN funds to reimburse providers for Covered Services provided to Mercy Care SNP Members within 45 days of MERCY CARE PLAN's receipt of a clean claim. A clean claim is one that may be processed without obtaining additional information from the provider of service or from a third party; but does not include claims under investigation for fraud or abuse or claims under review for medical necessity. MERCY CARE PLAN shall also require that if PLAN MANAGER pays a provider's clean claim more than 45 days after receipt, the provider shall be paid the amount due under this Agreement for the Covered Service plus interest at the rate of ten per cent per annum for each day between the 46th day and the date of payment.
- 3.2 PLAN MANAGER acknowledges that the term of this Attachment E shall run concurrently with the term of the PLAN MANAGER Agreement; provided, however, that the provisions of this Attachment E relating to the Mercy Care SNP shall automatically terminate in the event the CMS Agreement is terminated or not renewed, unless otherwise agreed to by CMS and MERCY CARE PLAN. Regardless of the reason, termination of this Attachment E is subject to the

following:

- 3.2.1 PLAN MANAGER shall provide plan management services to Mercy Care SNP Members pursuant to this Attachment and the reimbursement provisions of the PMSA Agreement for the duration of the contract period for which CMS payments have been made to MERCY CARE PLAN.

SECOND AMENDMENT TO THE  
PLAN MANAGEMENT SERVICES AGREEMENT

THE PLAN MANAGEMENT SERVICES AGREEMENT, with an effective date of May 1, 2002 (the "Agreement"), by and between Southwest Catholic Health Services Network Corporation (d.b.a. Mercy Care Plan, Mercy Healthcare Group and Mercy Care Advantage) ("MCP" or "PLAN"), and Schaller Anderson of Arizona, L.L.C., ("SAA"), is hereby amended by this SECOND AMENDMENT TO THE PLAN MANAGEMENT SERVICES AGREEMENT ("Second Amendment") as of January 1, 2006.

WHEREAS, MCP and SAA entered into the FIRST AMENDMENT TO THE PLAN MANAGEMENT SERVICES AGREEMENT as of March 18, 2005.

WHEREAS, MCP entered into an agreement with the Center for Medicare and Medicaid Services ("CMS") as a Medicare Advantage Special Needs Plan (the "SNP Plan") starting January 1, 2006.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, MPC and SAA hereby amend the Agreement as follows:

1. Services of Manager – Article 2, section 2.1 (a), third sentence of the Agreement is hereby deleted in its entirety and replaced with the following:  
  
"MANAGER shall provide or arrange for and compensate all personnel necessary to provide Services under this Agreement ("Manager Employees" as further defined in Section 2.2.a.) and MANAGER shall pay all costs necessary to provide Services under this Agreement, except as expressly provided in this Agreement or directly funded by AHCCCS in addition to PLAN revenue ("Total Revenue" as further defined in Section 5.1.b.).
2. Services of Manager – Article 2, section 2.2 (r), second sentence of the Agreement is hereby deleted in its entirety.
3. Services of Manager – Article 2, section 2.2 (u) is hereby added to the Agreement as follows:
  - (u) Third Party Administration – MANAGER shall provide third party administration services and, effective January 1, 2006, all related vendor commissions and fees will be paid by MANAGER.
4. Compensation – Article 5, section 5.1(a) (ix) of the Agreement is hereby deleted in its entirety and replaced with the following:

4/5/06  
cc: Stan Aronovich (email)  
Finance (Cheryl Campbell)  
Deb Bacon  
Brian Fischer  
PJ + MB

(ix) SNP Plan – [REDACTED] % of Total Revenue (as defined below) attributable to PLAN's enrolled SNP Plan members.

5. Compensation – Article 5, section 5.1(b), first sentence of the Agreement is hereby deleted in its entirety and replaced with the following:

““Total Revenue” means all PLAN revenue (excluding any revenue collected for periods prior to the Effective Date) net of premium taxes, including (i) capitation premiums; (ii) supplemental payments; (iii) reinsurance revenue; and (iv) third party liability (“TPL”) collections.”

6. Except as expressly modified by this Second Amendment, the Agreement and First Amendment shall remain in full force and effect.

THIS SECOND AMENDMENT TO THE PLAN MANAGEMENT SERVICES AGREEMENT is hereby entered into this 10<sup>th</sup> day of March 2006.

SOUTHWEST CATHOLIC  
NETWORK CORPORATION

By:

Linda Hunt

Its:

President

SCHALLER ANDERSON  
OF ARIZONA, L.L.C.

By: Schaller Anderson, Incorporated

Its: Manager

By:

Patricia J. Davis  
Secretary

Its:

04-04-2006

**THIRD AMENDMENT TO THE  
PLAN MANAGEMENT SERVICES AGREEMENT**

This Third Amendment to the Plan Management Services Agreement ("Third Amendment") is dated January 13, 2010. This Third Amendment amends the Plan Management Services Agreement effective as of May 1, 2002 (the "Original Agreement"), between Southwest Catholic Health Network Corporation (d.b.a. Mercy Care Plan, Mercy Healthcare Group and Mercy Care Advantage) ("MCP" or "Plan"), and Schaller Anderson, LLC (f.k.a. Schaller Anderson of Arizona, L.L.C.), ("SA" or "Manager"). The Agreement was previously amended by the First Amendment to the Plan Management Services Agreement as of March 18, 2005, and the Second Amendment to the Plan Management Services Agreement as of January 1, 2006 (the Original Agreement, as amended by the above First Amendment and Second Amendment is collectively referred to as the "Agreement").

MCP and SA desire to further amend the Agreement, on the terms and conditions set forth in this Third Amendment. Capitalized terms used but not defined in this Third Amendment shall have the meanings ascribed to them in the Agreement.

In consideration of the mutual promises and covenants contained in this Third Amendment, MCP and SA amend the Agreement as follows:

1. Compensation.

- a. Total Revenue Definition. The first sentence of Section 5.1(b) of the Agreement is deleted and replaced with the following:

"Total Revenue" means all Plan revenue (excluding any revenue collected for periods prior to the Effective Date) net of premium taxes, including (i) capitation premiums (which shall include all capitation revenue whenever earned, including but not limited to reconciliation and risk adjustment revenue); (ii) supplemental payments; (iii) reinsurance revenue; and (iv) third party liability ("TPL") collections.

- b. Risk Share. Section 5.2 of the Agreement is deleted, and replaced with the following:

Risk Share. SA shall share the risk of the results of operations of MCP for each Plan Year (defined as July 1 of a calendar year through June 30 of the following calendar year) beginning with the Plan Year that ends June 30, 2010, on the following basis:

At the end of each Plan Year, SA shall calculate MCP's operating income for the Plan Year, subject to audit by MCP's certified public auditors (the "Auditors"). If MCP's operating income for the Plan Year is less than █% of Total Revenue, SA shall pay MCP █ of the amount by which operating income is less than █% of Total Revenue, with the amount paid limited to \$ █ with respect to any single Plan Year. If MCP's operating income for the Plan Year is more than █% of Total Revenue, MCP shall pay SA █ of the amount by which operating income exceeds █% of Total Revenue, with the amount paid

2/11/10  
CC: [unclear] - 195

limited to \$ [REDACTED] with respect to any single Plan Year; provided, however, that MCP shall not be obligated to pay SA any portion of the Plan's net income for a Plan Year in which Manager fails to remain eligible to receive assignments of new acute care program members within each Geographic Service Area served by the Plan under contract(s) with the AHCCCS Administration.

The amount payable by SA to MCP or MCP to SA pursuant to this Section shall be paid based on the final audit (the "Audit") by the Auditors, with payment to be paid promptly following Plan's receipt of the Audit, and in no event later than December 31 of the calendar year in which the end of the Plan Year falls. In the event this Agreement terminates by expiration or otherwise on a date other than the last day of a Plan Year (June 30<sup>th</sup>), this Section shall apply to the time period between the end of the previous Plan Year and the termination effective date (the "Termination Year"), with the \$ [REDACTED] limit pro-rated for the number of months in the Termination Year, as illustrated by the following examples:

1. Example 1: The Agreement terminates effective December 31<sup>st</sup>, so the Termination Year consists of the six -month period between the end of the previous Plan Year and the effective date of termination; if MCP's operating income during such Termination Year is less than [REDACTED]% of Total Revenue, SA shall pay MCP [REDACTED] of the amount by which operating income is less than [REDACTED]% of Total Revenue for the Termination Year, up to \$ [REDACTED] ([REDACTED]).
2. Example 2: The Agreement terminates effective September 30<sup>th</sup>, so the Termination Year consists of the three -month period between the end of the previous Plan Year and the effective date of termination; if MCP's operating income during such Termination Year exceeds [REDACTED]% of Total Revenue, MCP shall pay SA [REDACTED] of the amount by which operating income exceeds [REDACTED]% of Total Revenue for the Termination Year, up to \$ [REDACTED] ([REDACTED]).

Any amount payable by SA to MCP or MCP to SA for the Termination Year shall be paid based on the final audit (the "Audit") by the Auditors, with payment to be paid promptly following Plan's receipt of the Audit, and in no event later than December 31 of the calendar year in which the end of the Termination Year falls.

c. Supplemental Compensation. A new Section 5.3 is added to the Agreement, as follows:

Supplemental Compensation. For any Plan Year in which MCP's operating income is equal to or more than [REDACTED]% of Total Revenue, Manager will be eligible to earn supplemental compensation in an amount up to \$ [REDACTED]; provided, however, that any supplemental compensation earned under this Section that would result in MCP's operating income falling below [REDACTED]% of Total Revenue after taking the supplemental compensation into account will not be paid to Manager. For any Plan Year for which Manager is eligible to receive supplemental compensation, the supplemental compensation will be paid (a) \$ [REDACTED] for achievement of operational and financial metrics, (b) \$ [REDACTED] for achievement of provider satisfaction survey metrics, (c) \$ [REDACTED] for achievement of member satisfaction survey

metrics, (d) \$ [REDACTED] for achievement of call and claims metrics, and (e) up to \$ [REDACTED] for full or partial achievement of HEDIS-related metrics. The specific metrics applicable to the 2009-2010 Plan Year are attached to this Amendment as Attachment 1. The specific metrics applicable to subsequent Plan Years will be agreed upon annually by Plan and Manager prior to the beginning of the applicable Plan Year. However, if Plan and Manager do not agree on the specific metrics applicable to a particular Plan Year within ninety (90) days following the beginning of the applicable Plan Year, the benchmarks in effect for the immediately prior Plan Year will remain in effect for the new Plan Year. Manager will provide its supplemental compensation calculations to Plan for review within 90 days following the end of the Plan Year, and, at Plan's option, to Catholic Health Audit Network ("CHAN"), for audit of the metrics of the calculations. Supplemental compensation will be paid promptly following Plan's receipt of the Audit, and if requested by Plan, CHAN's audit of the metrics of the calculations, and in no event later than December 31 of the calendar year in which the end of the Plan Year falls.

2. Term and Termination.

a. Term. Section 6.1 of the Agreement is deleted and replaced with the following:

Term. The Term of this Agreement shall be from the Effective Date through June 30, 2012, subject to earlier termination pursuant to Section 6.2 of this Agreement. Thereafter, until either Plan or Manager gives the other 180 days prior written notice that this Agreement will be terminated at the end of the applicable Plan Year, this Agreement shall automatically renew for successive one-year periods.

b. Termination. Sections 6.2(a) and 6.2(c) of the Agreement are deleted, and Section 6.2(b) is renumbered as Section 6.2.

3. Conforming Changes.

a. Reports by Manager. The phrase "ninety (90) days" in the first sentence of Section 2.2d. of the Agreement is changed to "one hundred twenty (120) days," to reflect the historic delivery of the report referred to in that Section, which occurs following the completion of the Audit.

b. Capitation Management. Section 2.2.g. of the Agreement is amended to delete the words "within fourteen (14) working days of receipt of capitation premiums from AHCCCS or other payor," and replacing that language with "within the timeframes specified in the applicable provider contracts," to reflect the fact that capitation received by the Plan is paid in accordance with the Plan's provider contracts.

4. Notices. The address and other information for SA and MCP are deleted and replaced with the following:

If to SA:

Schaller Anderson, LLC  
4645 East Cotton Center Boulevard  
Building 1  
Phoenix, AZ 85040  
Attention: Thomas L. Kelly, CEO and President  
Telephone: (602) 659-1631  
Facsimile: (602) 431-7478

With a copy to:

Schaller Anderson, LLC  
4645 East Cotton Center Boulevard  
Building 1  
Phoenix, AZ 85040  
Attention: Legal Department  
Telephone: (602) 659-1333  
Facsimile: (602) 431-7333

If to MCP:

Carondelet Health Network  
2202 N. Forbes Boulevard  
Tucson, AZ 85745  
Attention: Ruth W. Brinkley  
West Ministry Market Leader,  
Ascension Health  
President and Chief Executive Officer,  
Carondelet Health Network  
Telephone: (520) 872-7796  
Facsimile: (520) 872-7852

With a copy to:

St. Joseph's Hospital and Medical Center  
350 West Thomas Road  
Phoenix, Arizona  
Attention: Linda Hunt  
Service Area President, CHW Arizona  
President/CEO, St. Joseph's Hospital and Medical Center  
Telephone: (602) 406-3649  
Facsimile: (602) 406-7143

5. This Third Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
6. Except as expressly modified by this Third Amendment, the Agreement and First Amendment shall remain in full force and effect.

*[SIGNATURE PAGE AND ATTACHMENT FOLLOW]*

[SIGNATURE PAGE  
THIRD AMENDMENT TO THE PLAN MANAGEMENT AGREEMENT]

IN WITNESS WHEREOF, THIS AMENDMENT IS EXECUTED AND DELIVERED BY THE PARTIES ON THE DATE SET FORTH AT THE BEGINNING OF THIS AMENDMENT.

SOUTHWEST CATHOLIC HEALTH NETWORK CORPORATION

SCHALLER ANDERSON, LLC (f.k.a. SCHALLER ANDERSON OF ARIZONA, L.L.C.)

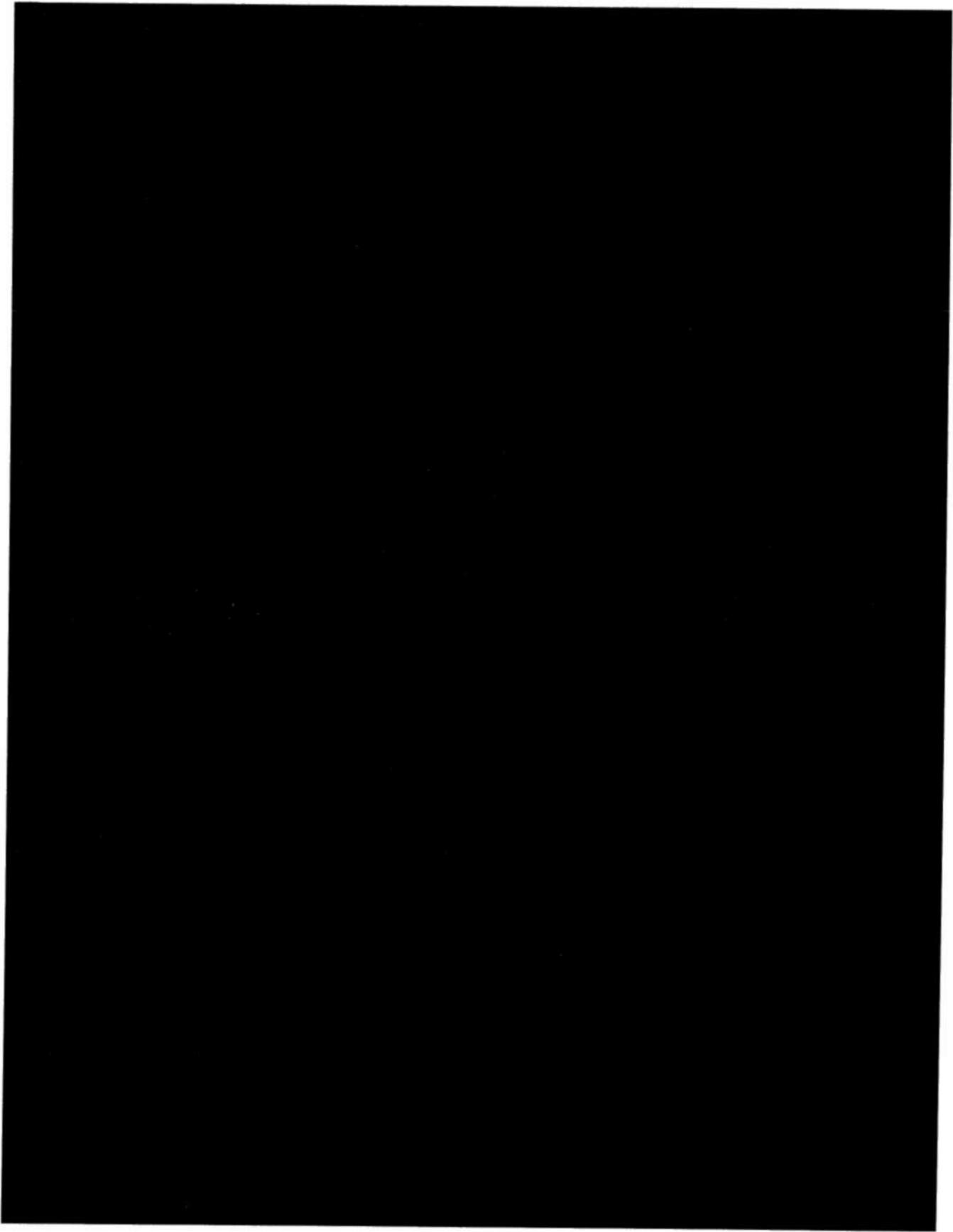
By: *Linda Hunt*  
Printed Name: LINDA HUNT  
Title: President/CEO  
Date: 1-13-2010

By: *Thomas Kelly*  
Printed Name: Thomas L. Kelly  
Title: President  
Date: 1/13/2010

APPROVED BY:

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_



**Janice K. Brewer, Governor**  
**Thomas J. Betlach, Director**

801 East Jefferson, Phoenix, AZ 85034  
PO Box 25520, Phoenix, AZ 85002  
Phone: 602-417-4000  
www.azahcccs.gov



*Our first care is your health care*  
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

February 8, 2010

Mark Fisher, CEO  
Mercy Care Plan  
4350 E. Cotton Center Blvd., Building D  
Phoenix, AZ 85040

**RE: 3<sup>rd</sup> Amendment to the Management Services Agreement**

Dear Mark:

AHCCCS has reviewed the 3<sup>rd</sup> Amendment to the Management Services Agreement between Southwest Catholic Health Network Corporation (d.b.a. Mercy Care Plan) and Schaller Anderson, LLC.

AHCCCS has approved the amendment as submitted. This approval is for the Acute and ALTCS line of business only. If you have any questions please let me know. Thank you.

Sincerely,

Rodd J. Mas  
Acute Care Operations Manager  
Division of Health Care Management

C: Lorry Bottrill, MCP  
Kate Aurelius, AHCCCS  
John Black, AHCCCS  
Alan Schafer, AHCCCS  
Shelli Silver, AHCCCS  
Elizabeth Stackfleth, AHCCCS