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Lisa R. Lange  
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December 4, 2013

**VIA HAND DELIVERY**

Kristen L. Forsberg, CPA, CFE  
Insurance Financial Examiner/Licensing Specialist  
Office of the Commissioner of Insurance  
125 South Webster Street, 2nd Floor  
Madison, WI 53703

**Re: Form A/Form D Filings - Trilogy Health Insurance, Inc.**

Dear Ms. Forsberg:

This letter is in response to your letter dated November 6, 2013 relating to the above-referenced Form A filing dated October 22, 2013 and supplements our response dated November 18, 2013.

1. Amended and Restated Operating Agreement. Attached is the Second Amended and Restated Operating Agreement of Trilogy Health Holdings, LLC in substantially final form.
2. Financial Projections – Trilogy Health Insurance, Inc. (“THI”). Updated Financial Projections are being filed under separate cover with a request for confidential treatment.
3. Form D filing – Administrative Service Agreements. The proposed form of SMG Administrative Services Agreement is attached. Exhibit B to that Agreement is being filed under separate cover with a request for confidential treatment.

Please feel free to contact me with any questions or comments.

Very truly yours,



Lisa R. Lange

LRL/co  
Enclosures

cc w/o enc: William D. Felsing, Trilogy Health Insurance, Inc.

WHD/9994214.1

**SECOND AMENDED AND RESTATED OPERATING AGREEMENT  
OF  
TRILOGY HEALTH HOLDINGS, LLC**  
a Wisconsin limited liability company

**THIS SECOND AMENDED AND RESTATED OPERATING AGREEMENT** (the "Agreement") is made and entered into effective January 1, 2014 ("Effective Date"), by and among Trilogy Health Holdings, LLC, a Wisconsin limited liability company (the "Company"), and William D. Felsing, Glenn J. Reinhardt, Gary Hovila, Michael Flock, James Enright, ██████████ ██████████ Scas Management Group, LLC ("Scas") and Independent Physicians Network, Inc. ("IPN") (each a "Voting Member" and collectively, the "Voting Members" of the Company), and Carroll A. Carlson, Lon A. Blaser, Peter C. Farrow, Stacy J. Salan, Jeffrey S. Hacker, and Rodney Jaeck (collectively, the "Investor Members" of the Company) for the purposes of providing the rights, obligations, and restrictions as set forth in this Operating Agreement with the force and effect of an operating agreement as provided for in the Wisconsin Limited Liability Company Law (the "WLLCL"). The Voting Members, the Investor Members and any other person who becomes a member of the Company by contributing to the capital of the Company and executing a counterpart to this Operating Agreement, may from time to time hereafter be referred to individually as a "Member", and collectively as "Members".

In consideration of the mutual promises made in this Operating Agreement, the parties agree to manage and operate the Company pursuant to this Operating Agreement as follows:

**DEFINITIONS**

Certain defined terms shall, for purposes of this Operating Agreement, have the meanings set forth below:

**"AFFIRMATIVE VOTE"** shall mean the vote described in Section 6.2 below.

**"CODE"** shall have the meaning set forth in Section 3.1(a) below.

**"ESTATE" AND "PERSONAL REPRESENTATIVE."** Where reference is made herein to the "estate" or "personal representative" of a decedent, if the assets of such decedent upon his or her death are administered pursuant to the terms of a trust, joint tenancy, or similar instrument or arrangement ("Estate Substitute") in lieu of a probate proceeding, then all references to the decedent's "estate" shall be deemed instead to be references to the Estate Substitute, and references to the decedent's "personal representative" shall be deemed instead to be references to the trustee, administrator or other person having the legal authority to act on behalf of the Estate Substitute.

**"FAMILY MEMBER"** means any person who is a spouse or direct lineal descendant of any of one of the Founders. For the avoidance of doubt, such term (A) does not include the spouse of any such lineal descendant (unless such spouse is a direct lineal descendant of a Founder) and (B) does include an adopted child of such a lineal descendant.

**"FISCAL PERIOD"** means any 12-month period ending on December 31 or any portion of such period for which the Company is required to allocate income, gain, loss, or deduction for federal income tax purposes.

**"FOUNDER"** means each of William D. Felsing, Glenn J. Reinhardt, Gary Hovila, Michael Flock, James Enright, and "Founders" collectively means all of the foregoing individuals.

**"INVESTORS' UNIT"** shall mean an equal divisible portion of the membership interests of the Company having the same economic rights as a Voting Unit to share in profits, losses and distributions of the Company, and having no voting rights (except as otherwise provided in this Agreement). The Company is authorized to issue eleven thousand four hundred fifty (11,450) Investors' Units.

**"MAJORITY IN INTEREST OF THE FOUNDERS"** means Founders holding in the aggregate a majority of the Voting Units held by all Founders collectively

**"NET TAX RATE"** shall have the meaning set forth in Section 3.1(c) below.

**"TAX MATTERS PARTNER"** shall have the meaning set forth in Section 5.5(c) below.

**"THI"** means Trilogy Health Insurance, Inc., a wholly-owned subsidiary of the Company.

**"UNITS"** shall mean the equal divisible portion of each class of membership interests of the Company, and include Voting Units and Investors' Units. Voting Units may be issued as either capital interests or profits interests, pursuant to Section 2.4 below.

**"VOTING UNIT"** shall mean an equal divisible portion of the voting membership interests of the Company. Each Voting Unit shall have one vote and shall be entitled to allocations of profits and loss and distributions as set forth herein. The Company is authorized to issue eighty eight thousand forty seven (88,047) Voting Units, comprised of seventy-four thousand three hundred eighty-two (74,382) capital interests and thirteen thousand six hundred sixty-five (13,665) profits interests.

## **ARTICLE 1 General Provisions**

**Section 1.1. Name.** The name of the Company is Trilogy Health Holdings, LLC.

**Section 1.2. Registered Office and Agent.**

**(a) Initial Office and Agent.** The address of the Company's Registered Office shall initially be at **8040 Excelsior Drive, Suite 200, Madison, WI 53717**, and its initial Registered Agent shall be **National Registered Agents, Inc.**

**(b) Filing on Change.** Upon the appointment of a new Registered Agent or the change of the Registered Office, the Manager shall file or cause the filing of the document required by section 183.0105 of the WLLCL as appropriate to the circumstances.

**Section 1.3. General Purpose.** The Company is authorized, through one or more subsidiaries, to engage in the business of providing Medicaid health plan benefits to individuals

who are participants in Medicaid and Medicaid SSI programs and to conduct any lawful business directly or indirectly related or ancillary thereto or in furtherance thereof.

## ARTICLE 2

### Capital

**Section 2.1. Number of Units Held.** As of the date of this Agreement, the Voting Units (as capital interests or profits interests) are held by the Voting Members as set forth in the Ownership Table set forth in Exhibit A attached hereto, and incorporated by reference herein, which may be amended from time to time to reflect permitted transfers of Units. The holders of Investors' Units and the number of Investors' Units held by each Investor Member as of the date of this Agreement are as set forth in Exhibit A.

### **Section 2.2. Additional Capital; Borrowing.**

**(a) No Capital Calls.** Except as expressly set forth herein, the Members shall not be required to make any additional capital contributions or loans to the Company. If the Managers determine that the Company capital is or is soon likely to become insufficient for the conduct of the Company's business, the Managers shall attempt to borrow funds from Members or third parties on such terms and conditions as are reasonable under the circumstances.

**(b) Borrowed Funds.** Each Voting Member shall be severally liable to the other Voting Members for his, her or its pro rata share (based on the total Units held by all Voting Members) of any indebtedness of the Company for which recourse may be had by the lender against any Voting Member as a result of a guarantee or similar undertaking. If a Voting Member is compelled to make a payment on any indebtedness of the Company in excess of the Voting Member's pro rata share the other Voting Members shall reimburse the Voting Member entitled to reimbursement upon demand in proportion to their respective number of Units. The provisions of this Section 2.2(b) may only be enforced by the Voting Member entitled to reimbursement under this Section 2.2(b).

**Section 2.3. Capital Accounts.** An individual Capital Account shall be maintained for each Member. As of the date of this Agreement, each Member's Capital Account balance shall be in the amount set forth on Exhibit A. Each Member's Capital Account shall be increased by (i) the fair market value of such Member's additional capital contributions, if any (net of liabilities secured by contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); and (ii) allocations to such Member of profits of the Company. Each Member's Capital Account shall be decreased by [a] such Member's share of distributions; [b] the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code); and [c] allocations to such Member of losses of the Company.

**(a) Initial Capital Contribution.** Prior to the execution of this Agreement, each Member has made its required capital contribution, and such capital contribution is reflected in such Member's capital account balance set forth on Exhibit A.

**(b) Transfer of Capital Account.** If a sale or exchange of a Member's interest in the Company occurs, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

**(c) Compliance with Code Section 704(b).** The manner in which Capital Accounts are to be maintained and each Member's allocable share of profits and losses are determined pursuant to this Agreement is intended to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. If, in the opinion of the Company's accountants or attorneys, the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section or the allocations provided in Article 4 should be modified in order to comply with Code Section 704(b) and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in this Agreement, the method in which Capital Accounts are maintained and/or in which profits and losses are allocated among the Members shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

**(d) Deficit Capital Account; No Right to Withdraw.** Except as otherwise expressly required in this Agreement or the WLLCL, no Member shall have any liability to restore all or any portion of a deficit balance in such Member's Capital Account. No Member is entitled to withdraw from the Company, to receive a return of any part of such Member's Capital Contribution, to receive any distribution or to receive a repayment of any positive balance in such Member's Capital Account, except as expressly described and provided in this Agreement. No Member has the right to demand that distributions be in-kind. No Member will be paid interest on any Capital Contribution or on such Member's Capital Account.

**Section 2.4. Profits Interest Units.** To the extent a Voting Member made no capital contribution in exchange for Voting Units, such Units shall be deemed issued in consideration of services rendered and to be rendered to the Company by the Voting Member (a "Profits Interest Holder") and are intended to constitute substantially vested profits interests for federal income tax purposes within the meaning of Internal Revenue Service Revenue Procedure 93-27. No capital contribution has been credited to the capital account of a Profits Interest Holder with respect to the issuance of such Voting Units. A Profits Interest Holder shall be a Member with respect to such Voting Units from and after their issuance.

### **ARTICLE 3 Distributions**

#### **Section 3.1. Tax Distributions.**

**(a) Current Tax Distributions.** To the extent permitted by law and consistent with the Company's need for cash reserves and obligations to its creditors as determined by the Managers, the Company shall make distributions ("Tax Distributions") on or before April 15 (the "Tax Distribution Date") of any given Fiscal Period. The aggregate amount of the Tax Distribution made with respect to any given Tax Distribution Date shall be the current year tax

distribution amount, which shall be the product of (1) the Company's estimated federal taxable income, calculated by the Board or its designee under the provisions of the Internal Revenue Code of 1986 as amended from time to time (the "Code") as though the Company were an individual all of whose gross income and expenditures were attributable to a trade or business regularly carried on, for the relevant period multiplied by (2) the Net Tax Rate (as defined hereafter), and subject to a cumulative adjustment. The cumulative adjustment shall be determined by first multiplying the cumulative net taxable income of the Company, taking into account all of the taxable income and all of the net losses of the Company for all of the years of its existence, including the current year, and, if the cumulative net taxable income is a positive number, that number shall be multiplied by the Net Tax Rate. If the product of the cumulative net taxable income multiplied by the Net Tax Rate exceeds the cumulative Tax Distributions for all of the years of the Company's existence, then a Tax Distribution shall be made to the extent of such excess, but no more than the current year tax distribution amount. If the product of the cumulative net taxable income multiplied by the Net Tax Rate is less than the cumulative Tax Distributions for all of the years of the Company's existence, then a Tax Distribution shall not be made for that year. If the cumulative net taxable income is a negative number, then no Tax Distribution shall be made. Such distributions shall be made in proportion to a Member's Units.

**(b) Additional Tax Distributions.** In the event any income tax return of the Company, as a result of an audit or otherwise, reflects items of income, gain, loss, or deduction that are different from the amounts estimated pursuant to Section 3.1(a) above with respect to the Fiscal Period of the return in a manner that results in additional income or gain of the Company being allocated to Members, an additional Tax Distribution shall be made under the principles of Section 3.1(a) above, except that (1) the last day of the calendar month in which the adjustment occurs shall be treated as a Tax Distribution Date, and (2) the amount of the additional income or gain shall be treated as the Company's federal taxable income.

**(c) Net Tax Rate.** For purposes of this Section 3.1, "Net Tax Rate" means:

(i) with respect to current Tax Distributions made pursuant to Section 3.1(a) above, 50%, as adjusted from time to time by the Managers to reflect the highest marginal rates of income taxes (including the tax imposed by Section 1411 of the Code) imposed on resident individuals of Wisconsin, assuming state and local income taxes are fully deductible; or

(ii) with respect to additional Tax Distributions made pursuant to Section 3.1(b) above, such rate as is determined by the Managers, taking into consideration the taxable year to which the additional Tax Distribution relates, the jurisdictions to which income taxes may be owing with respect to the income or gain under consideration, and any interest or penalties to be paid with respect to the income or gain under consideration.

**Section 3.2. Current Distributions.** To the extent permitted by law and consistent with the Company's need for cash reserves and obligations to its creditors as determined by the Managers, the Company shall make distributions to the holders of Units in such amounts, at such times, and in such form as determined by Affirmative Vote. Current distributions shall be made to the Members in proportion to their Units.

**Section 3.3. Liquidating Distribution.** In the event the Company is liquidated pursuant to Article 9 below, the assets shall be distributed pursuant to Section 9.4.

#### **ARTICLE 4 Allocation of Profits and Losses**

**Section 4.1. Profits.** Except as otherwise provided in this Agreement, any profits recognized by the Company in any fiscal period shall be allocated to the Members and Profits Interest Holders in proportion to their number of Units (without distinction between Voting Units and Investors' Units).

**Section 4.2. Losses.** Except as otherwise provided in this Article, any losses recognized by the Company in any Fiscal Period shall be allocated to the Members in proportion to their number of Units and Profits Interest Units (without distinction between Voting Units, Investors' Units and Profits Interest Units).

#### **Section 4.3. General Rules.**

(a) Except as otherwise provided in this Operating Agreement, all items of Company income, gain, loss, deduction for federal and state income tax purposes, and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they share Profits or Losses, as the case may be, for the year.

(b) For purposes of determining the profits, losses, or any other items allocable to any period, profits, losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Managers using any permissible method under Code Section 706 and the Regulations thereunder.

**Section 4.4. Allocations and Distributions upon Dissolution.** When the Company is dissolved and wound-up, all items of income, gain, loss and deduction not previously allocated shall be allocated to the Members pursuant to this Article 4. It is the intent of the Members that after the allocations described in the previous sentence are made and the final cash distribution referred to in this Operating Agreement is made, that such actions will result in the capital account balances of the Members equaling zero following the dissolution of the Company. The allocation and distribution provisions of this Operating Agreement shall be construed in such a way in order to achieve this result.

#### **ARTICLE 5 Managers**

**Section 5.1. Managers.** The business and affairs of the Company shall be managed by a Board of Managers (the "Board" or the "Managers") in accordance with the provisions of this Agreement and the WLLCL. The Board shall act in a capacity equivalent to the board of directors of a corporation. The Managers, acting as a Board of Directors, may appoint officers of the Company. Officers shall have such authority as expressly delegated to them in writing. To

the extent there has been no express delegation of authority, an officer shall have such authority and duties as are customary for a person holding such title.

The Board shall consist of seven (7) Managers. Each Manager shall be a natural person. Managers need not be Members. The number of Managers may be increased or decreased by Super Majority Vote, provided that the number of Managers shall never be fewer than the sum of the number of IPN Managers, Scas Managers, Founders' Managers and Executive Manager.

(a) **Founders' Managers.** For as long as they are Members, the Founders (acting by the affirmative vote of a Majority in Interest of the Founders) shall have the right to designate two (2) Managers (either or both of which may be a Founder), and each of those respective Managers shall be a "Founders' Manager." A Founders' Manager may be removed (for any or no reason) only by the Founders (acting by the affirmative vote of a Majority in Interest of the Founders). Any vacancy on the Board with respect to a Founders' Manager may be filled only by the Founders. If at any time all of the Founders are no longer Members, then there shall be no Founders' Manager, and the terms of the Founders' Managers who are then serving shall terminate automatically at such time.

(b) **IPN Managers.** For so long as IPN is a Member, IPN shall have the right to designate two (2) Managers, who shall be the "IPN Managers." An IPN Manager may be removed (for any or no reason) only by IPN. Any vacancy in an IPN Manager's seat on the Board shall be filled by IPN. If at any time IPN is no longer a Member, then there shall be no IPN Manager, and the terms of the IPN Managers who are then serving shall terminate automatically at such time.

(c) **Scas Managers.** For so long as Scas is a Member, Scas shall have the right to designate two (2) Managers, who shall be the "Scas Managers." A Scas Manager may be removed (for any or no reason) only by Scas. Any vacancy in a Scas Manager's seat on the Board shall be filled by Scas. If at any time Scas is no longer a Member, then there shall be no Scas Manager, and the term of the Scas Managers who are then serving shall terminate automatically at such time.

(d) **Executive Manager.** One of the Managers shall be the person serving from time to time as the Executive Director, President, Chief Operating Officer or equivalent executive of THI (the "Executive Manager").

(e) **Other Managers.** Managers other than the Executive Manager, Scas Managers, IPN Managers and Founders' Managers, if any, shall be elected by Majority Vote.

## **Section 5.2. Specific Authority and Powers of the Managers.**

(a) **Authority.** Except to the extent otherwise required by the WLLCL or to the extent this Operating Agreement requires an action to be approved by the Voting Members, the Board, in the name of, on behalf of, and at the expense of the Company, shall be authorized to take any and all action necessary to conduct the business of the Company. Persons dealing with the Company shall be entitled to rely exclusively upon the power and authority of the Managers



set forth in this Agreement. No Member other than the Manager shall have the authority to act for or on behalf of the Company.

**(b) Actions Requiring Super Majority Vote.** Except upon the approval of the Members by Super Majority Vote, the Board shall not have the authority to:

(i) buy, sell, or lease Company property outside of the ordinary course of business;

(ii) invest Company funds otherwise than in any or all of the following: (x) short-term direct obligations of, or obligations fully guaranteed by, the United States of America or any agency thereof; (y) certificates of deposit issued by any bank, trust company or national banking association having total capital and surplus in excess of \$500,000,000 and rated at least AAA by Standard & Poor's Corporation and Aaa by Moody's Investors Service; or (z) money market funds or accounts;

(iii) enter into or perform agreements to purchase or acquire a business or take any action with respect to any consolidation or merger involving the Company;

(iv) incur indebtedness for borrowed money or procure temporary, permanent, conventional, or other financing or refinancings, or mortgage, pledge or subject to a security interest any of the Company assets; provided that the Company may, by action of the Board, without the approval of the Members, from time to time incur unsecured indebtedness for borrowed money if the aggregate principal amount thereof outstanding at any time does not exceed \$50,000.00;

(v) enter into contracts or agreements having a term of one year or greater or calling for an expenditure of more than ten thousand dollars (\$10,000.00);

(vi) other than in the ordinary course of business, make any single expenditure or series of related expenditures, exceeding \$2,000.00;

(vii) hire or discharge employees, consultants or other personnel;

(viii) make capital improvements to or otherwise rehabilitate the Company's properties;

(ix) pay any compensation or remuneration to or enter into, terminate (other than pursuant to its terms) or alter any agreement with a Member or a person or entity in which a Member has a direct or indirect financial interest, or to whom a Member is related;

(x) enter into any business (directly or through any subsidiary) other than the business of providing Medicaid health plan benefits to individuals who are participants in Medicaid and Medicaid SSI programs within the State of Wisconsin (and any lawful business directly or indirectly related or ancillary thereto or in furtherance thereof);

- (xi) admit a new Member;
- (xii) authorize or issue additional Units;
- (xiii) issue or redeem any Units or equity or membership interests of any kind, except as otherwise required or permitted by this Agreement;
- (xiv) amend the Company's Articles of Organization;
- (xv) settle any dispute or litigation or other proceeding, whether administrative or otherwise, which would have a material adverse effect on the Company or a Member, or waive any claim in excess of \$10,000 which the Company may have against another person.

(c) **Actions with Respect to Subsidiaries Requiring Super Majority Vote.**

The Board shall not (including without limitation by the exercise of its power to vote any shares of any subsidiary held by the Company) cause or permit any of the Company's subsidiaries (including THI) to take any of the following actions unless the same are approved, in each instance, by the Members by Super Majority Vote:

- (i) make any capital expenditure in excess of \$10,000.00 otherwise than pursuant to a budget previously adopted and approved by the board of directors of THI;
- (ii) buy, sell, transfer, assign, lease or otherwise dispose of all or any substantial portion of the property or assets of THI (including contract rights) outside of the ordinary course of business;
- (iii) enter into or perform agreements to purchase or acquire a business or take any action with respect to any consolidation or merger involving THI;
- (iv) pay any compensation or remuneration to or enter into, terminate (other than pursuant to its terms) or alter any agreement with a Member or a person or entity in which a Member has a direct or indirect financial interest, or to whom a Member is related;
- (v) authorize or issue additional shares of the capital stock of any subsidiary;
- (vi) amend any subsidiary's Articles of Incorporation or bylaws;
- (vii) enter into any business other than the business of providing Medicaid health plan benefits to individuals who are participants in Medicaid and Medicaid SSI programs within the State of Wisconsin (and any lawful business directly or indirectly related or ancillary thereto or in furtherance thereof);
- (viii) settle any dispute or litigation or other proceeding, whether administrative or otherwise, which would have a material adverse effect on THI or a Member.

(d) **Absolute Restrictions.** Notwithstanding any other provision of this Agreement, the Managers shall not have the authority to:

(i) do any act in contravention of applicable law or this Agreement or that would make it impossible to carry on the ordinary business of the Company;

(ii) possess property of the Company, or assign rights in specific property of the Company for other than a purpose of the Company; or

(iii) perform any act that would subject the Members to liability in any jurisdiction except as expressly provided in this Agreement.

(iv) vote the shares of THI held by the Company in any manner inconsistent with Article 8 below.

**Section 5.4. Certificate of Authority.** Any person dealing with the Company or a Manager may rely on a certificate signed by such Manager as to:

(i) the identity of the Members, the officers of the Company, and the Managers;

(ii) the existence or non-existence of any fact or facts that constitute a condition precedent to acts by the Manager or any other matter germane to the Company's affairs;

(iii) the persons who are authorized to execute and deliver any instrument or document on the Company's behalf; or

(iv) any act or failure to act by the Company or the Members or as to any other matter whatsoever involving the Company or any Member.

**Section 5.5. Duties and Obligations of Managers.**

(a) **Operations.** Subject to Section 5.2, the Managers shall take all action that may be necessary or appropriate (1) for the Company's day-to-day operation and business in accordance with the provisions of this Operating Agreement and applicable laws and regulations, and (2) for the continuation of the Company's valid existence as a limited liability company under the WLLCL.

(b) **Time.** The Managers shall devote to the Company such time as the Managers deem necessary for the proper performance of the duties under this Operating Agreement, but no Manager shall be required to devote his or her full time or any specific amount of time to the performance of those duties.

(c) **Tax Returns.** The Managers shall prepare or cause to be prepared and shall file on or before the due date (or any extension of the due date) any federal, state, or local tax

returns required to be filed by the Company. The Managers shall cause the Company to pay any taxes payable by the Company out of Company funds. One Manager shall be appointed by the Managers to serve as the Company's "tax matters partner" as defined for purposes of the Code.

**Section 5.6. Meetings of the Board; Manner of Acting.** Meetings of the Board may be called by any Manager or by Voting Members holding a majority of the Voting Units. Notice of any meeting shall be given to all Managers pursuant to Section 12.10 below not less than three (3) business days prior to the meeting. A majority of the Managers then serving shall be required to constitute a quorum for the transaction of business by the Board. Notice of a meeting need not be given to any Manager who signs a waiver of notice, a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting the lack of notice prior to the commencement of the meeting. All such waivers, consents and approvals shall be filed with the Company's records or made a part of the minutes of the meeting. Managers may participate in any meeting of the Managers through the use of telephone or any other means of communication by which either: (a) all participating Managers may simultaneously hear each other during the meeting or (b) all communication during the meeting is immediately transmitted to each participating Manager, and each participating Manager is able to immediately send messages to all other participating Managers. A Manager so participating is deemed to be present at the meeting. Actions of the Board shall be taken upon the majority vote of the Managers.

**Section 5.7. Written Consent in Lieu of Meeting.** Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting, without prior notice, if a consent in writing, setting forth the action so taken, shall be signed by all members of the Board then serving. Such action shall be as valid a Company action as though it had been authorized at a meeting of the Board.

**Section 5.8. Effect of Withdrawal.** If a Manager ceases to be a Manager for any reason, the remaining Manager or Managers, if any, shall continue to act as such unaffected by the withdrawal. If the Company at any time lacks a Manager, and there is no Voting Member holding Units, the Members may then vote the Units held by them, and shall conduct the Company's business and affairs by Affirmative Vote unless and until the Members appoint a substitute Manager by Affirmative Vote. The lack of a Manager shall not cause a dissolution or termination of the Company.

**Section 5.9. Limitation on Liability of Manager; Indemnification.** No Manager shall be liable, responsible, or accountable in damages or otherwise to the Members for any act or omission pursuant to the authority granted to the Manager by this Operating Agreement if the Manager acted in good faith and in a manner he or she reasonably believed to be within the scope of the authority granted to him or her by this Operating Agreement and in the best interests, or not opposed to the best interests, of the Company, provided that the Manager shall not be relieved of liability in respect of any claim, issue, or matter as to which the Manager shall have been finally adjudicated to have violated section 183.0402 of the WLLCL. Subject to this limitation in the case of any such judgment of liability, the Company shall indemnify and allow expenses to the Manager to the fullest extent permitted or required by section 183.0403 of the WLLCL.

**Section 5.10. Expenses.** All reasonable and customary out-of-pocket expenses incurred by the Managers in connection with the Company's business shall be paid by the Company or be reimbursed to the Manager who incurred the cost by the Company.

## **ARTICLE 6**

### **Actions by Members**

**Section 6.1. Manner of Acting.** Any authority not specifically delegated to the Manager acting pursuant to the WLLCL or Article 5 above shall be reserved to the Voting Members acting by an Affirmative Vote. Unless otherwise expressly provided herein, a matter requiring Member approval shall require an Affirmative Vote. Actions and decisions requiring an Affirmative Vote or a Super Majority Vote, as the case may be, may be authorized or made either by vote of the Voting Members taken at a meeting of the Voting Members or by written consent of the Voting Members holding the required Units in lieu of a meeting; provided that, except as provided in Section 6.6, any action taken by written consent of fewer than all of the Voting Members in lieu of a meeting shall be effective only if notice of the proposed action, including a copy of the form of consent (in substantially the form in which it is executed by those Voting Members who execute it), is provided to each Voting Member not executing such written consent not later than forty-eight (48) hours prior to its execution. If an action is taken by written consent, all Members entitled to vote who have not consented to the action shall be promptly advised in writing of the action taken. Any act taken by Affirmative Vote shall be implemented by the person or persons so authorized.

**Section 6.2. Determination of Affirmative Vote.** An "Affirmative Vote" requires either the consent at a meeting or by written consent (in accordance with Section 6.1) by Members holding Voting Units totaling more than fifty percent (50%) of the Company's outstanding Voting Units held by all Members, or, if there are no Members holding Voting Units, then by the Members holding more than fifty percent (50%) of the Company's outstanding Units. No person other than a Member entitled to vote may challenge an act taken by the Company based on the failure to obtain the requisite Affirmative Vote, and any act taken by the Company with respect to a third party having no actual knowledge of such failure shall be binding against the Company.

**Section 6.3. Determination of Super Majority Vote.** A "Super Majority Vote" means the consent at a meeting or by written consent (in accordance with Section 6.1) by Members holding Voting Units totaling more than seventy five percent (75%) of the Company's outstanding Voting Units held by all Members, or, if there are no Members holding Voting Units, then by the Members holding more than seventy five percent (75%) of the Company's outstanding Units. No person other than a Member entitled to vote may challenge an act taken by the Company based on the failure to obtain the requisite Super Majority Vote, and any act taken by the Company with respect to a third party having no actual knowledge of such failure shall be binding against the Company.

**Section 6.4. Voting.** Each Member entitled to vote and attending a meeting shall vote all of his Voting Units or abstain as to any given issue. Notwithstanding the foregoing, any

Member attending a meeting and abstaining from voting at such meeting on a given issue will be deemed to have voted all of his Voting Units in the same manner and in the same proportions as the other Voting Members entitled to vote who did not abstain on the issue. Upon the death of a Voting Member who is a natural person, such Member's Voting Units shall be converted to Investors' Units, and the holder of such deceased Member's converted Units shall not be entitled to vote such Units other than as Investors' Units.

**Section 6.5. Meetings.** Any Voting Member may call a meeting to consider approval of an action or decision under any provision of this Operating Agreement by delivering to each other Voting Member notice of the time and purpose of the meeting at least 24 hours before the meeting. A Voting Member entitled to vote may waive the requirement of notice of a meeting either by attending the meeting or executing a written waiver before or after the meeting. Any such meeting shall be held during the Company's normal business hours at its principal place of business unless all of the other Voting Members consent in writing or by their attendance at the meeting to its being held at another location or time.

**Section 6.6. Emergency Actions.** Notwithstanding any other provisions of this Article 6, if Voting Members who could authorize an action or decision at a duly called meeting reasonably determine, in writing, that the Company is facing a significant business emergency that requires immediate action, those Voting Members may, without complying with generally applicable procedures for meetings, authorize any action or decision that they deem reasonably necessary to allow the Company to benefit from a significant opportunity or to protect the Company from significant loss or damage, provided that they make reasonable efforts under the circumstances to contact and consult all Voting Members concerning the action or decision and the reason why the action or decision must be made without observing generally applicable procedures. In addition, copies of any such action shall be promptly delivered to all Members not participating therein.

**Section 6.7. Records.** The Company shall keep written records of all actions taken and votes made by the Members, which records shall be kept and maintained by a Manager. Any Member alleging that the requisite Affirmative Vote was not duly given has the burden of proof as to the invalidity of that Vote. Written records kept pursuant to this Section 6.7 of a meeting at which an Affirmative Vote was given as to an issue shall be prima facie proof of the validity of the Vote, if notice of the issue to be discussed at the meeting was duly given or waived pursuant to Section 6.5 above.

**Section 6.8. Restriction on Members.** No Member, in his or her capacity as such, shall have the authority to act for the Company in any matter.

**Section 6.9. Confidentiality; Restrictions on Competition.**

(a) Each Member acknowledges and agrees that the business plans, strategies, technical or engineering developments, pricing and cost information, financial information and reports, employee information, customers, business connections, customer lists, procedures, operations, techniques, and other aspects of and information about the business of the Company and its subsidiary THI (the "Confidential Information") are established at great expense and

protected as confidential information and provide the Company and THI with a substantial competitive advantage in conducting THI's business. Each Member further acknowledges and agrees that by virtue of his or her or its association with the Company, he, she or it has had access to and will have access to, and has been entrusted with and will be entrusted with, Confidential Information, and that the Company and THI would suffer great loss and injury if the Member would disclose this information or use it in a manner not specifically authorized by the Company or THI. Therefore, each Member agrees that during the period the Member owns any Units and for a period of two (2) years thereafter he, she or it will not, directly or indirectly, either individually or as an employee, agent, partner, Member, owner, trustee, beneficiary, co venturer, distributor, consultant or in any other capacity, use or disclose or cause to be used or disclosed, in any geographic territory in which disclosure could harm the existing or potential business interests of the Company or THI, any Confidential Information, unless and to the extent that any such information becomes generally known to and available for use by the public other than as a result of the Member's acts or omissions. The Member shall deliver to the Company at the termination of his, her or its association with the Company or at any other time the Company may request, all memoranda, notes, plans, records, reports, computer tapes, printouts and software and other documents and data (and copies thereof) relating to the Confidential Information or the business of the Company or THI which he, she or it may then possess or have under his, her or its control. Each Member acknowledges that nothing in this Agreement shall be construed to limit or negate the common law of torts or trade secrets where it provides the Company with broader protection than that provided herein.

(b) For so long as a Voting Member holds any Voting Units, and for a period of two (2) years thereafter, such Voting Member shall not, directly or indirectly, as an owner, stockholder, member, employee, officer, director, manager or lender (except as provided in this Section 6.9(b)), have any direct or indirect interest in any entity that is a licensed insurance company conducting a business of providing Medicaid health plan benefits to individuals who are participants in Medicaid or Medicaid SSI programs substantially similar to that of THI or any other subsidiary of the Company within those States of the United States in which, as of the date on which the Voting Member ceases to hold any Units, THI or any other subsidiary of the Company is licensed to operate as a health insurer (a "Competing Business"), unless the Voting Member and the Company mutually agree in writing that the products or target customers of such other entity are not, and will not be, in competition with the business of the Company or its subsidiaries. This Section 6.9 shall not prohibit (x) a Member's holding of an equity interest in a company whose equity interests are publicly traded, provided such Member owns less than five percent (5%) of the outstanding interests in that class of equity or (y) a Voting Member providing to a Competing Business services of a nature substantially the same as those which such Voting Member regularly provides in the ordinary course of such Voting Member's business to persons other than the Company and the Company's subsidiaries, provided that such Voting Member does not hold any equity interest in and is not a lender to or an employee, officer, director or manager of such Competing Business.

(c) Each Manager, by accepting a position as such, agrees that for so long as he or she is a Manager, and for a period of two (2) years thereafter, such Manager shall not, directly or indirectly, as an owner, stockholder, member, officer, director, manager or lender (except as provided in this Section 6.9(c)), have any direct or indirect interest in any entity that is

a licensed insurance company conducting a business of providing Medicaid health plan benefits to individuals who are participants in Medicaid or Medicaid SSI programs substantially similar to that of THI or any other subsidiary of the Company within those States of the United States in which, as of the date on which the Manager ceases to be a Manager, THI or any other subsidiary of the Company is licensed to operate as a health insurer (a "Manager Competing Business"), unless the Manager and the Company mutually agree in writing that the products or target customers of such other entity are not, and will not be, in competition with the business of the Company or its subsidiaries. This Section 6.9(c) shall not prohibit (x) a Manager's holding of an equity interest in a company whose equity interests are publicly traded, provided such Member owns less than five percent (5%) of the outstanding interests in that class of equity or (y) a Manager from providing services to a Manager Competing Business as an employee, consultant, independent contractor, or the like, provided that the Manager does not own any equity interest in such Manager Competing Business (other than equity interests permitted under the preceding clause (x)) and is not a lender to or a director, officer or manager of such Manager Competing Business. As a condition to becoming a Manager, each individual shall execute and deliver to the Company a Counterpart and Joinder in the form of Exhibit B.

The parties understand that it is possible that a natural person may be both a Member and a Manager, and it is intended that the provisions of this Section 6.9(c) and the preceding Section 6.9(b) not be mutually exclusive, but rather than they shall each apply, in accordance with their respective terms, to any person who is both a Member and a Manager.

## **ARTICLE 7**

### **Transfers of Units**

#### **Section 7.1. General Restriction on Transfer.**

(a) **Restricted Transfers.** Except as expressly permitted by this Agreement or upon the unanimous vote of all Voting Members, no Member (nor, with respect to any marital or community property interest in a Member's Units, any spouse of any Member) shall sell, give, assign, pledge, encumber or otherwise transfer in any manner or permit to be assigned, encumbered or otherwise transferred in any manner, whether voluntarily, by operation of law or otherwise (all collectively referred to herein as "Transfer"), any Units or any interest therein, which are now owned or which hereafter may be acquired by such Member. Any Transfer or attempted Transfer of any Units in violation of this Agreement shall be null, void and ineffective. Except as otherwise expressly provided in this Agreement, any Units Transferred (whether or not in compliance with the terms of this Agreement, and including any Units Transferred as a result of the failure to exercise fully the rights of first refusal or options to purchase provided under Section 7.1(c) and Section 7.2(b)) shall continue to be subject to the provisions and restrictions contained in this Agreement, and any transferee of such Units (a "Transferee Member") shall be deemed to have accepted and consented to be bound by the provisions and restrictions hereof as if such Transferee Member had originally executed this Agreement as a party hereto, and such Transferee Member shall be a "Member," as that term is used in this Agreement.



**(b) Permitted Transfers.** Notwithstanding the provisions of Section 7.1(a) or any other provisions of this Agreement, at any time after December 31, 2016, or prior to that date with the prior approval of the Board, (i) an individual Member may Transfer any Units to any person who is a Family Member of the transferring Founder, or to a custodian or guardian for any such person or such person's assets, or to the trustee or trustees of a trust for the exclusive benefit of one or more such Family Members, or any of them (provided, that a trust shall not fail to qualify as a Permitted Transferee under this clause (i) solely by reason of the fact that a charitable organization is a contingent beneficiary of such trust, if such charitable beneficiary's interest would vest only upon a complete failure of the Transferor's issue; but provided further, that such charitable contingent beneficiary shall nonetheless constitute an Impermissible Beneficiary for purposes of Section 7.3 below); and (ii) any Member may Transfer any Units to the Company; and (iii) any Member which is a corporation, limited liability company or other business entity may Transfer Units to a person or entity which acquires and succeeds to the operation of all or substantially all of the assets and business of the transferring Member. Any Units that are the subject of a Permitted Transfer to a Family Member pursuant to this Section 7.1(b) shall, upon the effectiveness of that Transfer, automatically be converted into and become Investors' Units and shall no longer constitute Voting Units, unless by Super Majority Vote the Voting Members shall have expressly consented to permit such Units to remain Voting Units. Any legal fees and other costs incurred by the Company in complying with the requirements of (i), (ii) or (iii) above shall be borne by the transferring Member.

Transfers permitted under this Section 7.1(b) are referred to herein as "Permitted Transfers" and the persons or entities to whom or to which Transfers may be made in accordance with this Section 7.1(b) are referred to herein as "Permitted Transferees."

**(c) Voluntary Sale of Units; Right of First Refusal.**

**(i) General.** Notwithstanding Section 7.1(a), any Member ("Offering Member") who, after December 31, 2016, receives a bona fide written offer ("Third Party Offer") from a purchaser to purchase all (but not fewer than all) of the Units held by such Member ("Offered Units") may sell such Units to such purchaser, but only in compliance with the provisions of this Section 7.1(c) and, to the extent applicable, Section 7.12, and only if such purchaser is not a Competing Business (and for this purpose a "Competing Business" shall be [a] as defined in Section 6.9(b), [b] determined at the time of such purported sale and [c] deemed to be such whether or not it operates in any of those States of the United States in which THI or any other subsidiary of the Company is licensed to operate as a health insurer).

**(ii) Rights of First Refusal.** The Offering Member shall first give written notice of the Third Party Offer (the "Sale Notice") to the Company and all of the other registered holders of Units (the "Other Members"), specifying the Units proposed to be sold, the purchaser, the price for the Offered Units (the "Third Party Price") and the payment terms of the proposed sale (the "Third Party Payment Terms"). The Sale Notice shall constitute an offer by the Offering Member to sell the Offered Units to the Company and/or to the Other Members, as provided below, at the Third Party Price and on the Third Party Payment Terms.

The Company shall have the exclusive right and option for a period of thirty (30) days after its receipt of said offer to accept said offer with respect to any or all of the Offered Units. If the Company accepts such offer, it shall notify the Offering Member and the Other Members in writing of such acceptance within such thirty (30) day period.

If the option is not exercised by the Company as to all of the Offered Units within such thirty (30) day option period, the Other Members, in proportion to their then holdings of Units, shall have the exclusive right and option for a period of thirty (30) days after the expiration of the Company's option period, in their own behalf and exercisable in the same manner as the Company, to accept the offer with respect to all, but not fewer than all, of the remaining Offered Units. If the option is not exercised by the Other Members as to all of the remaining Offered Units within such thirty (30) day option period, the Other Members electing to exercise their option (the "Electing Members") as set forth in the immediately preceding sentence shall have the additional right and option for a period of fifteen (15) days, in their own behalf and exercisable in the same manner as the Company, in proportion to their then holdings of Units (or in such other proportion as the Electing Members may agree), to accept the offer with respect to all, but not fewer than all, of the remaining Offered Units.

**(iii) Right to Sell.** If the offers granted pursuant to Section 7.1(c)(ii) are not accepted in the aggregate by the Company and/or the Other Members as to all of the Offered Units within the periods prescribed, then all of the Offered Units may be Transferred by the Offering Member at any time within thirty (30) days after the expiration of the last of said option periods, but only at the Third Party Price and on the Third Party Payment Terms and to the transferee specified in said offer. If such Offered Units are not Transferred by the Offering Member within said thirty (30) day period after the expiration of the last of said option periods, or if there is a change in any of the terms of said offer, the Offered Units shall not be subsequently transferable without again complying fully with the terms of this Section 7.1(c).

**(d) Involuntary Transfer by a Member; Pledge or Encumbrance of Units.**

**(i)** Whenever a Member has any notice or knowledge of any attempted, impending or consummated involuntary Transfer of or lien or charge upon any of his or her Units, whether by operation of law or otherwise, such Member shall give immediate written notice thereof to the Company and the Other Members. Alternatively, whenever the Company or any Other Member has any notice or knowledge of any such attempted, impending or consummated involuntary Transfer, lien or charge relating to any Units held by any other Member, the Company or such Other Member may give written notice thereof to the Company and all of the Other Members. In either case, the Company and the Other Members shall have the right and option to purchase the Units of the Member subjected to such involuntary Transfer, lien or charge; the options shall be at the Book Value Price and upon the Contract Payment Terms described in Section 7.8 hereof, and exercisable first by the Company and then by the Other Members in the same manner as is provided in Section 7.1(c) hereof. For purposes of this provision, the option periods provided in Section 7.1(c) shall commence upon the giving of notice as provided in this Section 7.1(d).

(ii) The Units subject to this Agreement shall not be subject to pledge or encumbrance except upon the prior written consent of the Company and such consent, if given, may be subject to such terms and conditions as the Company may require to protect the interests of the Company and the remaining Members and as are consistent with the purposes of this Agreement. Each Member agrees not to pledge or encumber his, her or its Units voluntarily and agrees to use all commercially reasonable efforts to keep his or her Units free of any liens or encumbrances.

(c) **Right of First Refusal after Transfer.** Notwithstanding the provisions of the preceding Sections 7.1(c) and 7.1(d), if any Transferee Member or Permitted Transferee attempts or desires to Transfer (whether voluntarily, involuntarily, by operation of law or otherwise and including pursuant to a Third Party Offer) any or all of his or her Units received from a Member (the "Transferor Member"), then the Transferee Member or Permitted Transferee shall give written notice thereof to the Company and all of the Other Members. Such notice shall comply with the requirements of the notice referred to in Section 7.1(c) hereof. Notwithstanding any provision hereof to the contrary, the Transferor Member shall have the exclusive right and option for a period of thirty (30) days after receipt of such written notice to purchase any or all of the Units that are to be Transferred by the Transferee Member or Permitted Transferee at the price and upon the payment terms provided in Section 7.1(c) or (d), as the case may be. If the Transferor Member does not timely exercise his, her or its right as to all such Units, then the Company and the Other Members (including the Transferor Member) shall have the right and option to purchase such remaining Units in the manner set forth, and at the price and upon the payment terms provided, in Section 7.1(c) or (d), as the case may be, such option periods to commence upon the expiration of the Transferor's Member's option period as set forth above. If the offers made pursuant to this Section 7.1(e) are not accepted in the aggregate as to all of the Units of the Permitted Transferee sought to be Transferred, the Permitted Transferee shall be free to Transfer those of such Units as to which such offers have not been accepted, as provided in Section 7.1(c) or (d).

## **Section 7.2. Death of a Member.**

(a) **General.** Upon the death of any Member ("Decedent") who is a natural person the personal representative of such decedent Member shall give written notice of such death to the Company and the other Members as soon as practicable, but in no event later than thirty (30) days after the later of the date of such death or the date of such personal representative's appointment. Alternatively, the Company or any other Member with knowledge of such death may give written notice thereof to the Company and the other Members. Such notice shall identify the Person or Persons to whom or to which the decedent's Units would pass upon such death in the absence of any of the restrictions imposed by this Agreement.

### **(b) Option to Purchase Units upon Death of a Member.**

(i) The provisions of this Section 7.2 shall apply in respect of any Units which, upon a Decedent's death, are not, by bequest, intestacy, operation of law, or otherwise, Transferred to a person who is a Permitted Transferee of the Decedent.

(ii) Upon the Decedent's death, the Company, and thereafter the Other Members, shall have the right and option to purchase all but not fewer than all of the Units to which this Section 7.2 applies, such option to be exercisable by the Company and thereafter the Other Members, in the manner provided in Section 7.1(c) above, by written notice to the personal representative of the Decedent's estate (or equivalent fiduciary) given not later than 90 days after the date on which notice of the Decedent's death is given as required by Section 7.2(a). The price at which the Units may be purchased under this Section 7.2 shall be the Fair Market Value Price determined as of the month-end immediately preceding the date of the Decedent's death. Such price shall be paid on the Contract Payment Terms. If the options to purchase granted pursuant to this Section 7.2(b) are not exercised in the aggregate by the Company and/or the Other Members as to all of the Decedent's Units to which this Section 7.2 applies within the periods prescribed, then those Decedent's Units as to which such option has not been exercised may be Transferred to the Person or Persons to whom or to which the Decedent's Units would pass upon such death in the absence of any of the restrictions imposed by this Agreement.

**Section 7.3. Redemption upon Impermissible Transfer from Trust.** If a trust holding any Units has as a beneficiary any person or entity who or which is not a Permitted Transferee (an "Impermissible Beneficiary") (whether or not such trust had any Impermissible Beneficiaries at the time it acquired Units), then if any Units held by such trust are transferred, purport to be transferred, or are sought to be transferred by the trust to such Impermissible Beneficiary (such Units being referred to as "Trust Callable Units"), before making any such transfer the trustee of such trust shall give written notice to the Company and the Other Members of the proposed transfer, identifying the Impermissible Beneficiary. The Company and the Other Members shall have the right and option to purchase all of such Trust Callable Units, in the manner and in accordance with the procedures provided in Section 7.2(b) above, at the Fair Market Value Price and payable on the Contract Payment Terms.

#### **Section 7.4. Marital Property.**

(a) **Effect of Death of Spouse of Member.** In the event of the death of a spouse of a Member, who is survived by said Member ("Surviving Spouse"), under circumstances where such deceased spouse has a marital or community property interest in Units registered in the name of said Member or said Member's deceased spouse ("Marital Property Interest"), then the Surviving Spouse shall have the option to purchase, and the estate of such deceased spouse of the Member (the "Estate"), or any other successor in interest to such deceased spouse, shall sell, if such option is exercised, all (but not less than all) of such Marital Property Interest. Such option shall be exercised by the Surviving Spouse giving the Estate, or any successor in interest to the deceased spouse, written notice within six (6) months of the date of death of the spouse that the Surviving Spouse has elected to exercise the option to purchase pursuant to this Section 7.4(a). Such option, once exercised, may not be revoked except with the written consent of the Estate or the successor in interest to the deceased spouse. The purchase price for the Units purchased pursuant to this Section 7.4(a) shall be the Fair Market Value Price, payable on the Contract Payment Terms.

**(b) Effect of Divorce.** In the event of the termination of the marriage of a Member (the "Divorced Member") by divorce, dissolution or legal separation, if the spouse of said Divorced Member is determined to have a Marital Property Interest in the Units registered in the name of said Divorced Member and the Marital Property Interest of the spouse of said Divorced Member in the Units is not received by said Divorced Member in accordance with the property settlement agreement, if any, or pursuant to the decree of divorce, dissolution or legal separation, then said Divorced Member shall have the option to purchase, and the spouse of said Divorced Member shall sell, if such option is exercised, all (but not less than all) of such Marital Property Interest. Such option shall be exercised by the Divorced Member giving the spouse written notice within six (6) months after the date of the entry of the decree of divorce, dissolution or legal separation that the Divorced Member has elected to exercise the option to purchase pursuant to this Section 5(b). Such option, once exercised, may not be revoked except with the written consent of the spouse. The purchase price for the interest in the Units purchased pursuant to this Section 7.4(b) shall be the Fair Market Value Price, payable on the Contract Payment Terms.

**(c) Secondary and Tertiary Options to Purchase Marital Property Interest.** In the event that the options provided in the preceding Sections 7.4(a) and (b) are not exercised by the Surviving Spouse or the Divorced Member, as the case may be, then the Company, and thereafter the Other Members, shall have options to purchase all but not less than all of the Marital Property Interest, at the same price and on the same terms as provided in Sections 7.4(a) and (b) above. Such options shall be exercisable, first by the Company and (to the extent not exercised by the Company) then by the Other Members, in the manner provided in Section 7.1(c)(ii) above. The periods of time within which such options may be exercised shall run from the date on which the Surviving Spouse's or the Divorced Member's (as the case may be) option expired pursuant to the preceding Section 7.4(a) or (b).

**Section 7.5. Options to Sell Units upon Termination or Non-Renewal of Administrative Service Agreements.** Each of IPN and Scas is a party to an Administrative Services Agreement with THI pursuant to which it provides certain services to THI (each an "ASA" and collectively the "ASAs"). In their capacities as parties to the ASAs, IPN and Scas are referred to herein as the "Service Providers." In the event that (i) THI elects not to renew an ASA upon the expiration of its initial four-year term for at least an additional three years (provided that the Service Provider is willing to renew it for such period on substantially the same terms as were applicable thereunder during its initial term), or (ii) an ASA is terminated prior to the expiration of its initial four-year term or its first three-year renewal term (x) by the Service Provider on account of an Event of Default (as such term is defined in the ASA) on the part of THI thereunder or (y) by THI in breach of the ASA (unless such termination is with the consent or concurrence of the Service Provider), then the Service Provider whose ASA is so terminated or not renewed shall have the right and option to require the Company to purchase, and if such option is exercised the Company shall purchase and the Service Provider shall sell, all (but not fewer than all) of the Units then held by the Service Provider, on the terms set forth in this Section 7.5 (the "Service Provider Put Option").

**(a) Manner of Exercise.** The Service Provider Put Option may be exercised only by written notice to the Company given not later than 90 days after the date the Service

Provider's ASA is terminated (or in the case of a non-renewal, the last day of such ASA's initial term). Once the Service Provider Put Option is so exercised, it may not be revoked without the consent of the Company, which consent may only be given if approved by a majority of the Board excluding the Managers who are appointed by the Service Provider exercising the Service Provider Put Option.

(b) **Purchase and Sale Price.** The price of Units purchased and sold pursuant to the Service Provider Put Option (the "Put Units") shall be the greater of (x) seventy-five percent (75%) of the Fair Market Value Price per Unit, or (y) an amount which, if it were paid in cash to the Service Provider in cash upon the closing of the sale of the Put Units, would result in the Service Provider earning a compound annual rate of return on its investment in the Put Units of three percent (3%) per annum, taking into account all amounts paid by the Service Provider for the Put Units and any and all distributions (other than Tax Distributions), if any, that may theretofore have been made to the Service Provider in respect of the Put Units.

(c) **Payment Terms.** The purchase price of the Put Units shall be paid on the Contract Payment Terms.

#### **Section 7.6. Determination of Book Value Price.**

(a) **General Definition.** The Book Value Price to be paid for the Units subject to this Agreement shall be an amount equal to the book value per Unit of the Company, consolidated with THI, determined as of the fiscal year-end immediately preceding the date on which the event first providing the Company or any Member with the option of purchasing Units occurs (the "Valuation Date"), reduced by the amount of any distributions made by the Company in respect of the Units to be purchased and sold after the Valuation Date. The Book Value Price shall be determined from the books of the Company in accordance with generally accepted accounting principles applied on a consistent basis by the accountants of the Company who customarily prepare the Company's financial statements, subject to the following:

(i) Marketable securities shall be valued at their closing prices as of the Valuation Date, or on the latest prior date on which the securities were actually traded;

(ii) No value shall be given to goodwill, going concern value, trademarks, trade names, licenses, copyrights, patents or other intangible assets of the Company except as same may be reflected on the books of the Company as of the Valuation Date;

(iii) Real property and buildings shall be valued at their original cost less depreciation computed on a straight line basis (regardless of the method otherwise used);

(iv) If the purchase and sale occurs as a result of a Member's death and if the Company maintains any life insurance on the life of such deceased Member, the net proceeds of such life insurance policy (in excess of borrowings, if any) paid or due to be paid to the Company shall not be included as an asset of the Company and the cash surrender value, if any, of such policy as of the Valuation Date shall be included as an asset.

(b) **Adjustments.** Appropriate adjustments in the purchase price shall be made for any adjustment in the number of Units, recapitalization, reorganization or issuance of additional Units of Common Stock occurring after the Valuation Date.

**Section 7.7. Determination of Fair Market Value Price.**

(a) **Fair Market Value.** The Fair Market Value Price per Unit shall be equal to (i) the fair market value of the Company and its subsidiaries (on a consolidated basis) as a going concern (without any discounts for minority interests, lack of marketability, or the like) determined as of the date on which the event first providing the Company or any Member with the option or requirement to purchase or sell Units occurs (the "Triggering Event"), divided by (ii) the total number of issued and outstanding Units of the Company as of such date. The amount per Unit so determined shall be reduced by the amount of any distributions made by the Company in respect of the Units to be purchased and sold after the date of the Triggering Event. The fair market value of the Company shall be determined by an appraiser acceptable to both the selling party or parties and the buying party or parties. If the parties are unable to agree on an appraiser within fifteen (15) days following the Triggering Event, the selling party or parties shall appoint one appraiser and the buying party or parties shall appoint another appraiser within thirty (30) days following the Triggering Event. The two appraisers so appointed shall then submit their respective appraisals to the Company and all Members, in writing, in hard copy only and in sealed envelopes, which envelopes shall not be opened until both appraisals are received. If each such appraisal is within ten percent (10%) of the numerical average of both such appraisals, then the fair market value shall be conclusively determined by taking the numerical average of both appraisals. If each such appraisal is not within ten percent (10%) of the numerical average of both appraisals, then the two appraisers shall mutually select and appoint a third appraiser who shall submit an appraisal of the Company's fair market value as provided above. Of the three appraisals thus received, the fair market value shall be conclusively determined as the value that is indicated by the appraisal which is neither the highest nor the lowest of the three. The parties shall share equally the fees and expenses of the appraiser jointly named, but each party shall be responsible for the fees and expenses of any appraiser named solely by him.

(b) **Deferral of Option Periods.** Notwithstanding anything contained in this Agreement to the contrary, if the determination of the Fair Market Value Price hereunder requires any appraisal, the option periods provided in this Agreement shall not commence until such appraisal or appraisals have been concluded and the Fair Market Value Price has been finally determined.

(c) **Life Insurance.** If the purchase and sale occurs as a result of a Member's death and if the Company maintains any life insurance on the life of such deceased Member, the net proceeds of such life insurance policy (in excess of borrowings, if any) paid or due to be paid to the Company shall not be included as an asset of the Company and the cash surrender value, if any, of such policy as of the date of the Triggering Event shall be included as an asset.

## **Section 7.8. Payment of Purchase Price and Transfer of Units.**

(a) Where reference is made in this Agreement to the payment of the purchase price of Units on the "Contract Payment Terms," such purchase price shall be paid in sixty (60) equal monthly installments of principal and interest, the first installment to be paid within thirty (30) days after the date on which the Book Value Price or Fair Market Value Price is finally determined, the option or options requiring the purchase or sale are finally exercised, or the event giving rise to an obligation to purchase and sell Units occurs, whichever is later, and the remaining installments shall be paid on the successive monthly anniversary dates of the first payment. The unpaid portion of such purchase price from time to time outstanding shall bear interest at the "Prime Rate" of interest (as defined below) as of the date on which the first payment is due, such rate to remain fixed over the term of the Note. The term "Prime Rate" means the Prime Rate of interest (the highest quoted base rate on corporate loans at large U.S. money center commercial banks, as published in the "Money Rates" section of the most recent Midwest Edition of The Wall Street Journal or, if not so published, another recognized reference rate that is comparable to the prime rate). The unpaid balance due shall be secured by the pledge of all of the Units purchased hereunder. The obligation to pay such purchase price shall be evidenced by a promissory note (the "Note"), incorporating the terms set forth above, and providing that the obligation may be prepaid in whole or in part at any time without penalty. Such Note shall also provide for the acceleration of all installments upon default in the payment of any one installment of principal or interest for a period of sixty (60) days or more from the due date of such installment. If the Company is the purchaser hereunder, the (i) the Note shall be subordinated to the Company's indebtedness to its principal lender or lenders, on terms reasonably acceptable to such lender or lenders, (ii) the Note shall be further subordinated, and shall contain such other terms and conditions, as may be required by any state or federal regulatory authority or agency having jurisdiction over the Company or its subsidiaries, and (iii) until the Note is paid in full, no dividend or other distribution to the Members, other than distributions made in accordance with Section 3.1(a) or 3.1(b), shall be paid or made by the Company without the prior written consent of the holder of the Note. Upon execution of the documents set forth above, the selling Member shall transfer the stock certificates for such Units to the purchasing party or parties duly endorsed for transfer.

(b) **Life Insurance.** The Company or any Member may (but shall not be required to) purchase and carry from time to time one or more policies of life insurance on the life of any Member for the purpose of providing funds to be used to pay all or a portion of the purchase prices of Units to be purchased hereunder upon such insured Member's death. Each Member agrees that he shall cooperate with the others (including by submitting to necessary medical examinations) to the extent reasonably necessary to facilitate the purchase of such life insurance. If a purchase of Units occurs as a result of the death of a Member, an amount equal to all life insurance proceeds (if any) received by the purchaser pursuant to all policies insuring the life of the deceased Seller, shall be paid to the Seller at the Closing if such proceeds have been received by the date thereof, and in such event the original principal balance of the Note to be delivered in connection with such purchase shall be reduced by the amount so paid. If such proceeds are received after the Closing, a payment equal to the amount of such proceeds shall be paid to the holder or holders of the Note within ten (10) days of receipt as a prepayment on the Note and the principal balance of the Note delivered in connection with the purchase shall be



reduced by the amount of the proceeds so paid after the payment is first allocated to accrued but unpaid interest. In no event shall the amount paid pursuant to this Section 7.8(b) exceed the amount of the unpaid purchase price then due. If there is more than one seller or holder of a Note, any such amount shall be paid pro-rata to the several sellers or Note holders, in proportion to the number of Units sold by them.

**Section 7.9. Time and Place of Closing.** Except as otherwise agreed by the Company, the closing of any Transfer pursuant to this Article 7 shall occur at the Company's principal office on such day as the Transferee shall select pursuant to the provisions of this Article 7. The Transferee shall notify the Transferor and the Company in writing of the exact date and time of closing at least 10 days before the closing date.

**Section 7.10. Transferee Not a Member in Absence of Board Consent.**

(a) Notwithstanding anything contained herein to the contrary, the transferee of all or any portion of or any interest or rights in any Unit which is Transferred (even with the unanimous approval of the Members as provided in Section 7.1(a)) shall not be entitled to become a Member or acquire or exercise any rights of a Member other than the economic rights of the transferor relating to the Units Transferred, unless and until (i) such transferee shall have complied fully with the provisions of Section 7.11, and (ii) the admission of such transferee as a Member shall have been approved by the Board (which the Board may grant or withhold in its sole discretion). Until admitted as a Member, the transferee shall only be entitled to receive, to the extent transferred, only the distributions and allocations of profits or losses to which the transferor would be entitled.

(b) Upon and contemporaneously with any Transfer of a Member's Units, the transferring owner shall cease to have any residual rights associated with the Units transferred to the transferee.

(c) Each Member agrees that notwithstanding the provisions for the Transfer of any Units contained herein, the Units, when and if Transferred, shall remain subject to all of the terms and conditions of this Agreement.

**Section 7.11. Additional Conditions to Recognition of Transferee.** No Transfer of any Units, or any rights or interests therein, shall be effective until the transferor and the proposed transferee execute all necessary certificates or other documents and perform all acts required in accordance with the WLLCL and the other laws of the State of Wisconsin and any other states in which the Company is then conducting business, and any and all documents as shall be required from time to time by the rules and regulations of any regulatory body or commission having jurisdiction over the Company, to the extent necessary to give effect to the Transfer and to preserve the status of the Company as a limited liability company after the completion of the Transfer. Each transferee of any Units and each Person acquiring any Units shall be bound by all the terms and conditions of this Agreement. A Member seeking to Transfer any Units shall pay all of the Company's legal and other expenses incurred in connection with the Transfer, including without limitation, the expenses incurred in obtaining any legal opinions or other legal advice deemed necessary or appropriate by the Company in effecting the Transfer

of such Units. Without limiting the generality of the foregoing, in connection with the Transfer of any Units, the Managers may require the transferring Member and the proposed transferee to execute, acknowledge and deliver to the Managers such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the Managers may deem necessary or desirable to accomplish any one or more of the following:

- (a) constitute such transferee as a Member;
- (b) confirm that the proposed transferee has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of this Agreement, as the same may have been further amended (whether or not such transferee is to be admitted as a Member);
- (c) preserve the Company after the completion of such Transfer under the laws of each jurisdiction in which the Company is qualified, organized or does business;
- (d) maintain the status of the Company as a partnership for federal tax purposes; and
- (e) assure compliance with any applicable state and federal laws, including securities laws and regulations.

**Section 7.12. Sale of Control.**

(a) **“Tag-Along” Rights.** In the event of a proposed “Sale of Control” (as defined below) by a Voting Member or Voting Members (the “Majority Offerors”) to any bona fide purchaser (“Buyer”), then before consummating or entering into a binding agreement to consummate such Sale of Control, the Majority Offerors shall deliver a written notice (the “Tag-Along Sale Notice”) to the Company and each other Member stating their intention to consummate the Sale of Control to the proposed Buyer and describing, with reasonable particularity, the price, payment terms and other material terms and conditions of the proposed Sale of Control. Any Member desiring to participate in such proposed Sale of Control may elect to become a “Participating Offeree” with respect to such proposed sale by delivering to the Majority Offerors and the Company within fifteen (15) days after delivery of the Tag-Along Sale Notice a written notice stating that such Member has elected to be a Participating Member in respect of such sale and the number of Units (the “Participation Units”) that such Member proposes to sell in such sale. The Selling Member will use reasonable efforts to obtain the agreement of the Buyer to the participation of the Participating Offerees in the contemplated sale, and shall not consummate such sale unless each Participating Offeree is permitted to sell (at the same price and upon the same terms and conditions as the Majority Offerors) the Participation Units which such Participating Offeree has elected to sell hereunder (provided that if the Buyer declines to allow the participation of any Participating Offeree then, as an alternative the Majority Offerors may consummate the proposed Sale of Control so long as contemporaneously therewith the Majority Offerors purchase the Participating Offerees’ Participation Units from such Participating Offerees, at the same price and upon the same terms and conditions as the Majority Offerors’ Units are acquired by the Buyer).

(b) **“Drag-Along” Rights.** In the event of any proposed “Sale of the Company” (as defined below) by the “Company Sellers” (as defined below), each Member (“Participating Member”) shall, if the Company Sellers so request, participate in such transaction and vote for, consent to and not object to or otherwise impede consummation of such Sale of the Company, and agree to sell all (but not less than all) of his or her or its Units to the proposed Buyer in such transaction, at the same total consideration per Unit as is offered by such proposed Buyer to the Company Sellers (taking into account for this purpose all forms of remuneration and consideration payable to the Company Sellers as payment for their Units, however characterized) (the “Company Sale Price”). In furtherance of the foregoing, (a) each Participating Member will take, with respect to such Member’s Units, all necessary or desirable actions reasonably requested by the Company Sellers in connection with the consummation of the Sale of the Company and (b) each Participating Member will make the same representations, warranties, indemnities and agreements as each other Member, including without limitation, voting to approve such transaction, executing the applicable purchase agreement, and waiving any and all dissenter’s rights, appraisal rights and similar rights that may be applicable in connection with the Sale of the Company; except that (1) each Participating Member may be obligated to make representations and warranties as to such Participating Member’s title to and ownership of his, her or its Units, authorization, execution and delivery of relevant documents by such Member, enforceability of relevant agreements against such Member and other matters relating to such Member, to enter into covenants in respect of a Transfer of such Member’s Units in connection with such Sale of the Company and to enter into indemnification obligations with respect to the foregoing, in each case to the extent that each other Member is similarly obligated, but no Member shall be obligated to enter into indemnification obligations with respect to any of the foregoing in respect of any other Member or such other Member’s Units and (2) in no event shall any Participating Member be liable in respect of any indemnity obligations pursuant to any such Sale of the Company in an aggregate amount in excess of the total consideration payable to such Member in such transaction. Each Participating Member shall be entitled to receive payment of his, her or its share of the Company Sale Price in the same form and on the same payment terms as it is to be paid to the Company Sellers.

(c) **Expenses of Sale.** Each Participating Offeree and Participating Member will bear his, her or its pro rata share of the costs of any sale of Units pursuant to a Sale of Control or a Sale of the Company, to the extent such costs are incurred for the benefit of all selling Members and are not otherwise paid by the Company or the acquiring party. For purposes of this Section 7.12(c), costs incurred in exercising reasonable efforts to take all necessary actions in connection with the consummation of a Sale of Control or Sale of the Company in accordance with this Section 7.12 shall be deemed to be for the benefit of all Members, except that costs incurred by any Member in connection with the transfer of his or her or its own Units or otherwise on his or her or its own behalf will not be considered costs of the transaction hereunder and will be the responsibility of such Member.

(d) **Sale of Control.** For purposes of this Section 7.12, the term “Sale of Control” means a Transfer, in a single transaction or series of related transactions, to a person other than a Permitted Transferee, of Voting Units which comprise, in the aggregate, a majority of the total number of Voting Units then outstanding, including without limitation any Transfer

resulting from the failure, in whole or in part, to exercise any rights of first refusal or options to purchase, as the case may be, that may be applicable under Section 7.1 or Section 7.4.

(e) **Sale of the Company.** For purposes of this Section 7.12 the term "Sale of the Company " means a Transfer ( including without limitation any Transfer resulting from the failure, in whole or in part, to exercise any rights of first refusal or options to purchase, as the case may be, that may be applicable under Section 7.1 or Section 7.4), in a single transaction or series of related transactions, to a person other than a Permitted Transferee, of Voting Units which comprise, in the aggregate, eighty percent (80%) or more of the total number of Voting Units then outstanding; and the Members holding the Units that are so proposed to be sold are referred to herein as the "Company Sellers." Notwithstanding the foregoing, no such transaction shall constitute a "Sale of the Company" if either IPN, Scas or William Felsing is at such time a Member but not a Company Seller.

**Section 7.13 Limited Put Option.** Mr. William D. Felsing ("Mr. Felsing") shall have the right and option, on the terms and subject to the conditions set forth in this Section 7.13, to require the Company to purchase, and if such option is exercised the Company shall purchase and Mr. Felsing and each of his Permitted Transferees shall sell, all (but not fewer than all) of the "Felsing Units" (as defined below) on the terms set forth in this Section 7.13 (the "Felsing Put Option"). A "Felsing Unit" means any Unit which, as of the date on which the Felsing Put Option is exercised, is held by either Mr. Felsing or any of his Permitted Transferees.

(a) **Manner of Exercise.** The Felsing Put Option may be exercised only by written notice to the Company given not earlier than the seventh annual anniversary of the Effective Date ("7<sup>th</sup> Anniversary") and not later than six (6) months after the 7<sup>th</sup> Anniversary (such 6-month period being referred to as the "Exercise Window"); provided that the duration of the Exercise Window may be extended (but its commencement date may not be changed) by action of a majority of the Board excluding the Founders' Managers. Once the Felsing Put Option is so exercised, it may not be revoked without the consent of the Company, which consent may only be given if approved by a majority of the Board excluding the Founders' Managers.

(b) **Purchase and Sale Price.** The price of Felsing Units purchased and sold pursuant to the Felsing Put Option shall be the Fair Market Value Price per Unit.

(c) **Payment Terms.** The purchase price of Felsing Units purchased and sold pursuant to the Felsing Put Option shall be paid on the Contract Payment Terms.

**Section 7.14. Specific Performance.** The parties declare that it may be impossible to measure in money the damages that will accrue to any party by reason of a failure to perform any of the obligations under this Article 7, and the parties agree that this Article 7 shall be specifically enforced. Therefore, if any person institutes any action or proceeding to enforce the provisions of this Article 7, any person, including the Company, against whom the action or proceeding is brought waives the claim or defense that the party has or may have an adequate remedy at law. The person shall not urge in any such action or proceeding the claim or defense that a remedy at law exists, and the person shall consent to the remedy of specific performance of this Operating Agreement, without the necessity of posting bond or other security.

**Section 7.15. Absolute Restrictions on Transfers.** No Transfer of any Units may be made if, in the opinion of the Company's legal counsel, the transfer or assignment will violate any applicable federal or state laws or regulations. Before making any Transfer of any Units, the Transferor must notify the Company in writing and the Managers shall, if they believe there is a material risk of violating this Section 7.15, obtain an opinion from the Company's legal counsel confirming whether the proposed Transfer will cause such a violation of any such laws or regulations. Legal fees shall be the Transferor's responsibility.

## ARTICLE 8

### Certain Actions Regarding the Company's Subsidiaries.

**Section 8.1. Board of Directors of THI.** In its capacity as a shareholder of THI, the Company will cause the Board of Directors of THI ("THI Directors") to consist at all times of seven members; provided that the number of THI Directors may be increased or decreased if authorized by Super Majority Vote of the Members, but provided further that the number of THI Directors shall never be fewer than the sum of the number of IPN Directors, Scas Directors, Founders' Directors and Executive Director. The Company will cause the THI Directors to consist of the persons designated as follows:

(a) **Founders' Directors.** For as long as they are Members, the Founders (acting by the affirmative vote of a Majority in Interest of the Founders) shall have the right to designate two (2) THI Directors (either or both of which may be a Founder), and each of those respective THI Directors shall be a "Founders' Director." A Founders' Director may be removed (for any or no reason) only if so directed by the Founders (acting by the affirmative vote of A Majority in Interest of the Founders). Any vacancy on the Board with respect to a Founders' Director may be filled only by a person designated by the Founders. If at any time all of the Founders are no longer Members, then there shall be no Founders' Directors and the Company shall take appropriate action immediately to remove the Founders' Directors who are then serving.

(b) **IPN Directors.** For so long as IPN is a Member, IPN shall have the right to designate two (2) THI Directors, who shall be the "IPN Directors." An IPN Director may be removed (for any or no reason) only if so directed by IPN. Any vacancy in an IPN Director's seat on the Board shall be filled by a person designated by IPN. If at any time IPN is no longer a Member, then there shall be no IPN Director, and the Company shall take appropriate action immediately to remove the IPN Directors who are then serving.

(c) **Scas Directors.** For so long as Scas is a Member, Scas shall have the right to designate two (2) THI Directors, who shall be the "Scas Directors." A Scas Director may be removed (for any or no reason) only if so directed by Scas. Any vacancy in a Scas Director's seat on the Board shall be filled by a person designated by Scas. If at any time Scas is no longer a Member, then there shall be no Scas Director, and the Company shall take appropriate action immediately to remove the Scas Directors who are then serving.

(d) **Executive Director.** One of the Managers shall be the person serving from time to time as the Executive Director, President, Chief Operating Officer or equivalent executive of THI (the "Executive Manager").

(e) **Other Directors.** THI Directors other than the Executive Director, Scas Directors, IPN Directors and Founders' Directors, if any, shall be such persons as are designated by Majority Vote of the Members.

**Section 8.2. Actions with Respect to Subsidiaries Requiring Super Majority Vote.** The Company, in its capacity as the controlling or sole shareholder of any of its subsidiaries, shall not cause or permit any of the Company's subsidiaries (including THI) to take any of the actions enumerated in Section 5.2(c) unless the same are approved in advance, in each instance, by the Members by Super Majority Vote.

## **ARTICLE 9 Dissociation and Dissolution, Termination, and Liquidation of Company**

### **Section 9.1. Dissociation.**

(a) **Events of Dissociation.** A Member shall cease to be a Member ("Dissociate") upon the occurrence of any of the following events:

(i) the Member makes a general assignment of the Member's assets, including his or her Units, for the benefit of creditors;

(ii) the Member files a voluntary petition in bankruptcy;

(iii) the Member becomes the subject of an order for relief under the federal bankruptcy laws;

(iv) the Member files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(v) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Clause (iv) above;

(vi) the Member seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties, including the Member's Units;

(vii) the expiration of 120 days after the commencement of any involuntary proceeding against the Member seeking reorganization, arrangement, composition,

readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, if the proceeding has not been dismissed;

(viii) the expiration of 120 days after the appointment without the Member's consent or acquiescence of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties, including the Member's Units, if the appointment is not vacated or stayed, or at the expiration of 120 days after the expiration of any stay, if the appointment is not vacated;

(ix) if the Member is an individual, the Member's death or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or estate;

(x) if the Member is a trust or is acting as a Member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(xi) if the Member is a Company, partnership, or separate limited liability company, the dissolution and commencement of winding up of the Member; or

(xii) the Transfer, pursuant to Article 7 above, by the Member of all of the Member's Units.

**(b) Effect of Dissociation.** The Dissociation of a Member shall not result in the Transfer of the Member's Units except as provided in Article 7 above.

**Section 9.2. Events Causing Dissolution.** The Company shall be dissolved upon the happening of any of the following events ("Dissolution Events"): (1) the sale or other disposition of all or substantially all the Company's assets; or (2) a Super Majority Vote of the Members to dissolve the Company.

**Section 9.3. Termination.** Dissolution of the Company shall be effective on the date on which the Dissolution Event occurs, but the Company shall not terminate until articles of dissolution have been duly filed under the WLLCL, the Company's affairs have been wound up, and the Company's assets have been distributed as provided in Section 9.4 below. Notwithstanding the dissolution of the Company, this Operating Agreement shall continue to govern the Company's business and the Members' affairs until the Company is terminated and liquidated.

**Section 9.4. Liquidation.** As soon as reasonably practicable after the occurrence of a Dissolution Event, the Members shall appoint by Super Majority Vote a liquidator of the Company, who may but need not be a Member or Manager. The liquidator shall have the same authority (subject to the same limitations) granted to the Managers hereunder, and he or she shall proceed with the winding up and liquidation of the Company by applying and distributing its assets as follows:

(a) **Payment of Debts to Third Parties.** The assets shall first be applied to the payment of the Company's liabilities (other than any loans or advances that may have been made to the Company by a Member) and the liquidation expenses. A reasonable time shall be allowed for the orderly liquidation of the Company's assets and the discharge of liabilities to creditors so as to enable the liquidator to minimize any losses resulting from the liquidation;

(b) **Payment of Debts to Members.** The remaining assets shall next be applied to the repayment of any loans or advances (but not any capital contribution) made by the Members to the Company, in proportion to the relative amounts lent or advanced;

(c) **Payment of Distributions to Members Based on Capital.** The remaining assets shall next be applied and distributed to reduce the balance in each Member's capital account to zero; and

(d) **Payment of Distributions to Members Based on Units.** The remaining assets shall be applied and distributed to the Members in accordance with the number of Units held by them.

(e) **Reserve.** Notwithstanding the provisions above, the liquidator may retain such amount as the liquidator reasonably deems necessary as a reserve for any contingent liabilities or obligations of the Company, which funds shall, after the passage of a reasonable period of time, be distributed in accordance with the provisions of this Article 9.

**Section 9.5. Filing and Notice.** The liquidator shall promptly, upon his or her appointment, execute and file on the Company's behalf articles of dissolution as provided in section 183.0906 of the WLLCL. The liquidator shall also notify the Company's known claimants as provided in section 183.0907 of the WLLCL and publish a notice of the Company's dissolution as provided in section 183.0908 of the WLLCL, except as otherwise determined by the liquidator with an Affirmative Vote.

**Section 9.6. Distributions in Kind.** If any Company assets are to be distributed in kind, the assets shall be distributed on the basis of their value, and any Member entitled to an interest in the assets shall receive the interest as a tenant-in-common with all other Members so entitled.

**Section 9.7. Limitation on Liability.** Each holder of a Unit shall look solely to the Company's assets for all distributions from the Company and the return of his or her capital contribution to the Company and shall have no recourse (upon dissolution or otherwise) against any other Members or any of their affiliates.

## **ARTICLE 10**

### **Books and Records**

**Section 10.1. Books and Records.** The Company's books and records shall be maintained at the Company's principal office or at any other place designated by the Managers and shall be available for examination by any Member or his or her duly authorized



representative(s) at any reasonable time. Books and records shall be maintained on an accrual basis as used to prepare the Company's federal income tax returns.

**Section 10.2. Company Funds.** The Company's funds may be deposited in such banking institutions as the Managers determine, and withdrawals shall be made only in the regular course of the Company's business on such signature or signatures as the Managers shall determine. All deposits and other funds not needed in the operation of the business may be invested in certificates of deposit, short-term money market instruments, government securities, money market funds, or similar investments as the Managers determine.

**Section 10.3. Availability of Information.** The Company shall keep at its principal office and place of business, and each Member shall have the right to inspect and copy, only the following: (1) a current list of the full name and last-known business address of each Member or former Member set forth in alphabetical order, the date on which each Member or former Member became a Member and the period of his or her Membership, and the date on which any former Member ceased to be a Member; (2) a copy of the Articles of Organization and all amendments thereto; (3) copies of the Company's federal, state, and local income tax returns and financial statements, if any, for its four most recent years; and (4) copies of this Operating Agreement, any effective written amendments to this Operating Agreement, and all operating agreements no longer in effect. Each Member shall have the right to obtain from the Company from time to time on reasonable demand, at the Member's cost and expense, copies of any such information.

## **ARTICLE 11**

### **Reports**

Within 90 days after the end of each Fiscal Period, the Managers shall send to each person who was a Member at any time during the Fiscal Period then ended upon written request of any such Member prior to the end of such Fiscal Period (1) a balance sheet as of the end of the Period and (2) statements of income, Members' equity, changes in financial position, and a cash flow statement for the Fiscal Period then ended. In addition, the Managers shall provide such tax information as is necessary or appropriate for the preparation by the Members of their individual federal and Wisconsin income tax returns.

## **ARTICLE 12**

### **Miscellaneous**

**Section 12.1. Amendments to Operating Agreement.** This Agreement may be amended by, and only by, a Super Majority Vote; provided, that without the consent of (A) each Member thereby affected, no amendment (including without limitation any amendment to any defined term) or waiver shall alter or waive (i) such Member's obligations, liabilities or rights under Sections 2.1 through Section 2.3, Article 4, Section 6.11, or Sections 7.1 through 7.7, (ii) such Member's right to receive distributions, whether interim or liquidating, with respect to its Units at the same time or in the same per-Unit amounts as the other holders of Units, (iii) such Member's rights to indemnification or (iv) this Section 12.1; (B) each of IPN, Scas and a Majority in interest of the Founders, no amendment (including without limitation any

amendment to any defined term) or waiver shall alter or waive any of the provisions of Section 5.1, Section 5.2, Section 5.6, Section 6.3, section 6.5, Section 7.12 or Section 7.15; (C) the Service Provider thereby affected, no amendment (including without limitation any amendment to any defined term) or waiver shall alter or waive such Service Provider's obligations, liabilities or rights under Section 7.5; or (D) Mr. Felsing, no amendment (including without limitation any amendment to any defined term) or waiver shall alter or waive his obligations, liabilities or rights under Section 7.13.

**Section 12.2. Appointment of Managers as Attorney-in-Fact.** The Company constitutes and appoints each Manager as its true and lawful attorney-in-fact with full power and authority in its name, place, and stead to execute, acknowledge, deliver, swear to, file, and record at the appropriate public offices such documents as may be necessary or appropriate to carry out the provisions of this Operating Agreement, including, but not limited to, all certificates and other instruments (including counterparts of this Operating Agreement), and any amendment of this Operating Agreement, that the Managers deem appropriate to qualify or continue the Company as a limited liability company in the jurisdictions in which the Company conducts business or in which such qualification or continuation is, in the Managers' opinion, necessary to protect the Members' limited liability.

**Section 12.3. Binding Provisions.** The agreements and covenants contained in this Operating Agreement inure solely to the benefit of the Company, the Members, the Managers, duly appointed or elected officers and the parties to this Operating Agreement. No provision of this Operating Agreement shall be construed to create any third-party beneficiary rights or claims, including, without limitation, those of transferees of Units that have not been admitted as Members. Subject to the foregoing, the agreements and covenants contained in this Operating Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of the respective parties to this Operating Agreement.

**Section 12.4. Applicable Law; Jurisdiction; Venue.** This Operating Agreement shall be governed by and construed in accordance with the laws of the state of Wisconsin without regard to its choice of law provisions. The Members and Managers, for themselves and their successors and assigns, (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Wisconsin, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that they are not subject personally to the jurisdiction of the above-named courts, that their property is exempt or immune from attachment or execution, or that this Agreement or the subject matter hereof may not be enforced in or by such court.

**Section 12.5. WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION AGREEMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-**

ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

**Section 12.6 Separability of Provisions.** Each provision of this Operating Agreement shall be considered separable, and if for any reason any provision or provisions of this Operating Agreement are determined to be invalid and contrary to any existing or future law, the invalidity shall not affect or impair the operation of those portions of this Operating Agreement that are valid.

**Section 12.7. Headings.** Section headings are for descriptive purposes only and shall not control or alter the meaning of this Operating Agreement as set forth in the text.

**Section 12.8. Entire Agreement; Amendments.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. All prior agreements among the Members with respect to the subject matter hereof, whether written or oral, including without limitation the Amended and Restated Operating Agreement of the Company dated January 1, 2008, are merged herein and superseded hereby, and shall be of no force or effect.

**Section 12.9. Interpretation.** When the context in which words are used in this Operating Agreement indicates that such is the intent, words in the singular shall include the plural, and vice versa, and pronouns in the masculine shall include the feminine and neuter, and vice versa.

**Section 12.10. Notice.** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by electronic mail or facsimile, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Such notices shall be effective if sent to the respective addresses (including email addresses) of the Members as set forth on Exhibit A to this Agreement and if sent to the Company at its principal place of business; provided that written notice given in any other manner and/or to any other address shall be effective when actually received by the party entitled to receive it, and notice given by electronic mail shall be effective if sent to the email address from which the recipient most recently communicated by email to the Company (provided that the Company has not been notified in writing (including by email) that such email address is no longer effective). Any person may designate a different address (including email address) to which notices shall thereafter be directed and such designation shall be made by written

(including email) notice given in the manner hereinabove required. Notices to any assignee of a Member shall be given to such Member unless such assignee has designated a different address therefor by written notice given in the manner hereinabove required.

**Section 12.11. Counterparts; Facsimile and PDF Signatures.** This Operating Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Any signature to this Agreement or to any written notice, demand, communication or consent required or permitted to be given by the provisions of this Agreement transmitted electronically by facsimile or in “.pdf” format shall be deemed a true and legally binding signature for all purposes and shall for all purposes be considered an original signature.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Operating Agreement effective as of the Effective Date.

**THE COMPANY:**  
TRILOGY HEALTH HOLDINGS, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**VOTING MEMBERS:**

\_\_\_\_\_  
William D. Felsing

\_\_\_\_\_  
Glenn J. Reinhardt

\_\_\_\_\_  
Gary A. Hovila

\_\_\_\_\_  
James J. Enright

\_\_\_\_\_  
Michael T. Flock

\_\_\_\_\_  


INDEPENDENT PHYSICIANS NETWORK,  
INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SCAS MANAGEMENT GROUP, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

**INVESTOR MEMBERS:**

\_\_\_\_\_  
Carroll A. Carlson

\_\_\_\_\_  
Lon A. Blaser

\_\_\_\_\_  
Peter C. Farrow

\_\_\_\_\_  
Stacy J. Salan

\_\_\_\_\_  
Jeffrey S. Hacker

\_\_\_\_\_  
Rodney Jaeck

**EXHIBIT A  
OWNERSHIP TABLE**

	Voting Units		Investors' Units	% of		Capital Account Balance
	Capital Interests	Profits Interests		Outstanding Voting Units	Outstanding Total Units	
William D Felsing	16,000	6,499.5		25.55%	22.61%	\$ 563,400.00
Glenn J Reinhardt	5,000	2,333		8.33%	7.37%	\$ 183,647.00
Gary A Hovila	1,000	1,166.5		2.46%	2.18%	\$ 54,322.00
Michael T Flock	2,550	1,833		4.98%	4.41%	\$ 109,889.00
James J Enright	2,000	1,833		4.35%	3.85%	\$ 95,935.00
Stacy Jo Salan			500		0.50%	\$ 12,459.00
Jeffrey S Hacker			1,000		1.01%	\$ 25,167.00
Rodney Jaeck			500		0.50%	\$ 12,459.00
Carroll A Carlson			2,000		2.01%	\$ 50,085.00
Lon A Blaser			2,000		2.01%	\$ 50,085.00
Peter C Farrow			5,450		5.48%	\$ 136,552.00
Independent Physicians Network, Inc.	21,880			24.85%	21.99%	\$ 548,000.00
Scas Management Group, LLC	15,971			18.14%	16.05%	\$ 400,000.00
██████████	9,981			11.34%	10.03%	\$ 250,000.00
<b>TOTAL</b>	<b>74,382</b>	<b>13,665</b>	<b>11,450</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$ 2,492,000.00</b>

[INCLUDE ADDRESSES FOR NOTICES]

EXHIBIT B

COUNTERPART AND JOINDER

(To the Trilogy Health Holdings, LLC Second Amended and Restated Operating Agreement)

THIS COUNTERPART AND JOINDER (this "Joinder"), dated as of \_\_\_\_\_, \_\_\_\_\_, is entered into by \_\_\_\_\_ (the "Signatory") pursuant to the terms of the Second Amended and Restated Operating Agreement, as may be amended, supplemented or otherwise modified from time to time (the "Operating Agreement"), among the Members of Trilogy Health Holdings, LLC (the "Company") and the Company.

RECITALS

- A. Capitalized terms not otherwise defined in this Joinder shall have the meanings given to them in the Operating Agreement.
- B. The Signatory has been proposed as a Manager of the Company and the execution of this Joinder is a condition to the Signatory becoming a Manager as required by Section 6.9(c) of the Operating Agreement.

AGREEMENTS

As required by the Operating Agreement, the Signatory agrees as follows:

1. The Signatory hereby acknowledges and agrees that the Signatory has received and reviewed a copy of the Operating Agreement and hereby:
  - (a) joins the Operating Agreement as a Manager; and
  - (b) assumes, accepts and agrees to be bound by, and hereby confirms, all covenants, agreements and acknowledgments attributable to a Manager in the Operating Agreement, including, without limitation, Section 6.9(c) of the Operating Agreement.
2. This Joinder is irrevocable and a condition to the Signatory becoming a Manager.
3. The Signatory agrees that the Signatory shall execute and deliver all documents, make all rightful oaths, testify in any proceedings and do all other acts which may be necessary or desirable in the opinion of the Company to protect or record the rights of the Company or the Members arising under this Joinder, or to aid in the prosecution or defense of any rights arising therefrom, all without further consideration.

IN WITNESS WHEREOF, the Signatory has executed this Joinder as of

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## ADMINISTRATIVE AND MANAGEMENT SERVICES AGREEMENT

This ADMINISTRATIVE AND MANAGEMENT SERVICES AGREEMENT (this "Agreement") is made and entered into with an effective date of January 1, 2014, by and between Trilogy Health Insurance, Inc., a Wisconsin domestic insurance company ("Trilogy"), with its principal place of business located in Waukesha County, Wisconsin, and Scas Management Group, LLC, a Wisconsin limited liability company ("SMG") whose principal place of business is located in Milwaukee County, Wisconsin.

WHEREAS, Trilogy is a Wisconsin-based health insurance company and intends to enter into a contract with the Wisconsin Department of Health Services to administer Medicaid health plan benefits to eligible individuals in its service area under the Wisconsin BadgerCare Plus and Medicaid SSI Programs (the "Business");

WHEREAS, SMG provides certain administrative and management services for health plans and other businesses;

WHEREAS, Trilogy and SMG mutually desire that SMG perform such Administrative Services (hereinafter defined) on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration for the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

### 1 DEFINITIONS.

For the purposes of the Agreement, the following definitions shall apply:

1.1 "Administrative Services" means the services to be provided by SMG as set forth in this Agreement, including without limitation, those services set forth in Exhibit C to this Agreement, and any other services to be provided by SMG as may be mutually agreed to in writing by the parties.

1.2 "Advocate" or "Member Advocate" means the position described in the DHS Contract.

1.3 "Affiliate" of a Person means: (a) any other Person directly, or indirectly through one or more intermediaries, controlling, controlled by or under common control with such Person; (b) any officer, director, manager, partner, member, employer or direct or indirect owner, whether legally, beneficially or otherwise, of 5% or more of any class, series or other type of equity or voting securities or other ownership interests of such Person; or (c) any other Person for which a Person described in clause (b) acts in any such capacity.

1.4 "BadgerCare Plus" means one of the Wisconsin Medical Assistance Programs operated by the Wisconsin Department of Health Services under Title XIX of the Federal Social Security Act, and Chapter 49, Wis. Stats.

1.5 "BEAF" means billing error, abuse or fraud.

1.6 "Case Management" means case management services as defined in the DHS Contract.



1.7 “**Claim**” means a request for payment received as paper, through EDI, web interface or any other method submitted by a provider for health care services rendered.

1.8 “**Clean Claim**” means a Claim submitted to SMG that has no defect, impropriety, lack of any required substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment in accordance with Medicaid regulations or as stipulated in the DHS Contract.

1.9 “**Covered Services**” means those medical, dental, behavioral or ancillary services which are covered under the Wisconsin Medical Assistance Program governed by applicable Wisconsin Law. Covered Services also includes those services Trilogy has added to its benefit plan as defined by Trilogy’s Member handbook and provider procedure manual or Trilogy’s internal policies & procedures.

1.10 “**CPT**” means Current Procedural Terminology, the code set maintained by the American Medical Association through the CPT Editorial Panel. The CPT code set describes medical, surgical, and diagnostic services and is designed to communicate uniform information about medical services and procedures among physicians, coders, patients, accreditation organizations, and payers for administrative, financial, and analytical purposes.

1.11 “**DHS**” means the Wisconsin Department of Health Services.

1.12 “**DHS Contract**” means the contract in force during the term of this Agreement between Trilogy and DHS entitled “Contract for BadgerCare Plus and/or Medicaid SSI HMO Services Between The HMO and The Wisconsin Department of Health Services.”

1.13 “**EDI**” means electronic data received by SMG, including, but not limited to, Claims and Encounters.

1.14 “**Encounter**” means a record of a paid or denied Claim or capitated service received as paper, through EDI, web interface or any other method submitted by a provider or subcontractor of Trilogy.

1.15 “**Event of Default**” For the purposes of this Agreement, an “Event of Default” with respect to a party shall be deemed to have occurred upon any one of the following:

1.15.1 Any material breach by such party in the due observance or performance of any covenant, condition, or agreement contained in this Agreement, which breach continues unremedied for thirty (30) days after written notice of the alleged breach is sent by the non-breaching party to such party; provided, however, that if a complete cure of the alleged material breach cannot reasonably be accomplished within thirty (30) days after written notice of the breach, the breaching party shall not be deemed to be in material breach if the breaching party has substantially commenced action to remedy the alleged breach within thirty (30) days after the notice of breach and diligently pursues such remedy. Written notice of any alleged breach shall set forth the nature and details of the breach with sufficient specificity as to fully describe the nature of the alleged breach.

1.15.2 If such party materially fails to comply with applicable Laws or any Order or acts or fails to act in a negligent or reckless manner or in a manner that

materially and adversely affects such party's ability to perform under this Agreement (or with respect to Trilogy, under the DHS Contract) if such failure to comply, act or failure to act continues uncorrected for thirty (30) days after written notice of such conduct from the non-defaulting party.

1.16 "**HEDIS**" means Healthcare Effectiveness Data and Information Set and the activities and requirements as described in the DHS Contract.

1.17 "**HMO**" means a health maintenance organization or insurance company under contract with DHS to provide Medicaid services to its enrolled Members.

1.18 "**IPN**" means Independent Physicians' Network, Inc.

1.19 "**Law**" means any code, law, ordinance, regulation, reporting or licensing requirement, rule or statute applicable to a Person or business, including, without limitation, those promulgated, interpreted or enforced by any Regulatory Authority.

1.20 "**Liability**" means any direct or indirect, primary or secondary, liability, indebtedness, obligation, damage, penalty, assessment, cost or expense (including, without limitation, costs of investigation, collection and defense), claim, deficiency, guaranty or endorsement of or by any Person of any type, whether accrued, absolute or contingent, liquidated or unliquidated, matured or unmatured or otherwise.

1.21 "**LOA**" means letter of agreement.

1.22 "**Member**" means all eligible Medicaid recipients covered under the DHS Contract.

1.23 "**MOU**" means Memorandum of Understanding and refers to the list of MOUs that Trilogy is required to have in place under the DHS Contract.

1.24 "**OCI**" means the Wisconsin Office of the Commissioner of Insurance.

1.25 "**Order**" means any administrative decision or award, decree, injunction, judgment, order, quasi-judicial decision or award, ruling or writ of any federal, state, local or other court, arbitrator, mediator, tribunal or Regulatory Authority.

1.26 "**Paid/Denied**" for the purposes of referring to Claims shall be a reference to the date a check or other method of payment is cut or made to a provider or the date a remittance indicating either payment or denial is generated.

1.27 "**Pend, Pended, Pending**" for the purposes of referring to Claims or Encounters shall be a reference to the time frame either category is waiting to be Paid/Denied. Pended claims may or may not be "Processed."

1.28 "**Permit**" means any federal, state or local governmental approval, authorization, certificate, filing, license, notice or permit that is or may be binding upon any Person or its business.

1.29 "**Person**" means a natural person or any legal, commercial or governmental entity, including, but not limited to, a corporation, joint venture, general partnership, limited

partnership, limited liability partnership, limited liability company, trust, business association, group acting in concert, or any such Person acting in a representative capacity.

1.30 “**Plan**” means the Wisconsin Medical Assistance Programs operated by DHS under Title XIX of the Federal Social Security Act, Chapter 49, Wis. Stats., and related Laws.

1.31 “**Processed**” for the purposes of referring to Claims or Encounters means the application of all benefit policies and procedures to determine payment or denial of Covered Services or otherwise making either category available for payment or denial in the database.

1.32 “**QAPI Program**” means the Quality Assurance Performance Improvement program described in the DHS Contract.

1.33 “**Regulatory Authority**” means any federal, state or local regulatory agencies having jurisdiction over the parties and their respective businesses.

1.34 “**Reinsurance**” means insurance that is purchased by Trilogy from another insurance company as a means of risk management whereby the reinsurance company covers losses of Trilogy over a specific amount.

1.35 “**Service Area**” means the State of Wisconsin.

1.36 “**SSI**” means the disabled and/or frail elderly population who qualify for benefits under the Social Security Income statutes in Wisconsin.

1.37 “**Subrogation**” means the process through which reimbursement is sought from a third-party source for the cost of medical services paid for by Trilogy or payable by Trilogy when said third-party source is primarily liable for those costs.

1.38 “**THS**” means Trilogy Health Solutions, Inc., a corporation that provides various administrative services to Trilogy.

1.39 “**VBA**” means the benefits processing system used by SMG to process eligibility, membership, Claims, prior authorizations, Case Management, and general report data.

## 2 WARRANTIES AND COVENANTS.

2.1 Applicability of Laws. The parties agree that each party’s obligations to the other party hereunder shall be governed and controlled, as far as is reasonably practicable, within the precepts of applicable Laws.

2.2 Authority to Bind. Each party warrants and represents that it has full power and authority to enter into this Agreement and to bind itself to performance hereunder. Each party further warrants and represents that the individual signing this Agreement is an officer or a principal of such party or has been granted or delegated all requisite power and authority to bind such party.

2.3 Proprietary Control. Each party reserves all rights to and control over its names, symbols, service marks or trademarks now existing or hereafter established. Neither party shall use the other party’s names, symbols, service marks or trademarks for any purpose without the prior written consent of the other party.

2.4 Retention of Authority. Notwithstanding anything contained in this Agreement to the contrary, the parties acknowledge and agree that Trilogy shall retain the ultimate authority to manage the Business, including but not limited to, the right to establish general operating policies, to control its assets, and to manage and supervise all aspects of the Business, unless specifically delegated to SMG hereunder.

2.5 Compliance with Applicable Laws and Orders. Each party to this Agreement hereby agrees to comply with all applicable Laws, including but not limited to, those related to the BadgerCare Plus and Medicaid SSI programs and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and Orders.

2.6 Insurance. Each party to this Agreement hereby agrees to obtain and maintain, at its own expense, policies of insurance (or equivalent self-insurance) for general business operations and professional negligence for itself and its employees, agents and representatives in amounts equal to or greater than the minimum required by any applicable Law or otherwise in accordance with standard practices for its industry, including but not limited to D & O and E & O or professional liability and comprehensive liability, worker's compensation, and fidelity bonds.

### 3 OBLIGATIONS OF SMG.

3.1 Scope. During the term hereof, SMG shall perform all duties and obligations imposed on it under this Agreement on behalf of Trilogy as specified in this Agreement, including, but not limited to, those listed in Exhibits A and C, and shall prepare and submit all reports required in Exhibit D. Trilogy will consult with SMG in regard to any operational changes that are expected to affect SMG's performance of Administrative Services prior to making any such changes. SMG shall accommodate all reasonable changes. If the accommodation of any change shall materially affect SMG's obligations or costs to provide Administrative Services hereunder, SMG shall not be required to make such accommodation unless Trilogy and SMG shall first agree to the changes. If the parties are unable to agree, Trilogy may contract with a third party to perform such service or otherwise delegate it to a third party.

3.2 Additional Services. If Trilogy requests a service that is not identified herein (or directly incidental thereto), then SMG may either (i) notify Trilogy of its inability to provide the requested service and, in such event, SMG shall have no obligation or Liability to Trilogy with respect thereto and Trilogy may contract with a third party to perform such service or otherwise delegate it to a third party, or (ii) take such action as it and Trilogy may agree with respect to such service within a reasonable period of time after the request is made. If DHS requests a service from Trilogy that is not identified herein (or directly incidental thereto), however, then SMG shall immediately comply with the DHS request within the timeframe required by DHS pending agreement for payment for such additional services. In the event SMG and Trilogy do not reach agreement within sixty (60) days as to payment for said services, SMG shall have the right to terminate providing such additional services, and Trilogy shall pay SMG its internal and external costs and expenses incurred in providing such additional services.

3.3 Access to DHS Contract Data. Notwithstanding any other provision of this Agreement to the contrary, SMG agrees to allow Trilogy, DHS, the U.S. Department of Health Services, OCI or other Regulatory Authority or their designees to evaluate, through inspection or

other means the facilities of SMG, including audit, evaluation or inspection of any books, contracts, medical or enrollee information and other records of SMG that pertain to any aspect of services performed hereunder, reconciliation of benefit liabilities, and determination of amounts payable under the DHS Contract or as Trilogy may deem necessary in connection with the DHS Contract.

3.4 Affirmative Action/Civil Rights Compliance. SMG agrees to comply with all requirements of Trilogy's Affirmative Action and Civil Rights Compliance Plan ("CRC Plan"), as provided to SMG by Trilogy. SMG agrees to sign an LOA with Trilogy in that regard. At such a time as SMG has 50 or more employees and receives over \$50,000 in payments hereunder, SMG will complete its own CRC Plan and submit same to Trilogy.

3.5 Business Associate Agreement. SMG agrees to comply with the Business Associate Agreement attached as Exhibit E.

3.6 Claim Processing. SMG agrees to process Claims in compliance with all applicable Laws and contractual requirements of DHS or other state Regulatory Authority. In processing claims, SMG agrees to:

3.6.1 apply reasonable cost containment procedures;

3.6.2 use best efforts to identify BEAF;

3.6.3 maintain Claim processing policies and procedures and make them available to Trilogy upon request;

3.6.4 pursue and administer coordination of benefits Claims in accordance with applicable Laws and apply primary insurer's benefits to Trilogy's obligation;

3.6.5 prepare, collect supporting documentation and submit reports/request for recovered money to DHS or Trilogy's Reinsurance carrier, and support Subrogation recoveries by cooperating with and supplying Trilogy's Subrogation vendor any information needed to provide Subrogation services on Trilogy's behalf related to Claim payment, and reconcile DHS / County / Subrogation vendor and other recovered monies through VBA if applicable, and generate claim reports for Trilogy and its reinsurer on a monthly basis; and

3.6.6 notify Trilogy of all claims greater than \$50,000 for approval by Trilogy or its designee and any Claims that could reasonably be expected to implicate Reinsurance. As a condition to this subsection, Trilogy shall notify SMG of the terms of such Reinsurance and the criteria to trigger notification to Trilogy of said Claims.

3.7 Compliance with Policies & Procedures. SMG agrees to comply with all of Trilogy's written policies & procedures provided to SMG that govern any activity SMG is responsible for under this Agreement.

3.8 Cooperation with Audits. SMG agrees to assist Trilogy in any audits or inspections by OCI, DHS, designees representing the State of Wisconsin or local counties, employed or consulting auditors during the course of independent audits, certification audits, or audits conducted by external quality review organizations. SMG agrees to provide access to

SMG premises, all related Trilogy materials, representatives of Trilogy and duly authorized agents or representatives of DHS, U.S. Department of Health and Human Services and OCI.

3.9 Cultural Competency. SMG agrees to comply with Trilogy's cultural competency policies in its interaction with Members and providers in all communication and in any written material created for same on behalf of Trilogy.

3.10 Customer Service. SMG agrees to provide phone coverage for general customer service, Member services and provider services Monday through Friday from 8:00AM to 5:00PM with the exception of legal and SMG holidays which shall be communicated to Trilogy and agreed upon by both parties at the start of this Agreement. SMG is not responsible for providing after hours, weekend or holiday telephone support to Trilogy under this Agreement.

3.11 Disaster Recovery. SMG will provide a disaster recovery plan which includes backup of Trilogy data and a back up physical location at the Trilogy office with a secondary location at IPN which will be available to both SMG and Trilogy in the event of a disaster.

3.12 Employ Staff. SMG agrees to hire, subcontract, appoint, and supervise all personnel at SMG necessary to carry out the responsibilities of this Agreement, in the reasonable judgment of SMG. All such personnel shall be appropriately trained and qualified to perform such responsibilities and shall obtain and maintain any necessary Permits. All persons providing Administrative Services shall be employed or subcontracted by SMG, and SMG shall be solely responsible for the payment of all wages, fringe benefits, and other compensation associated therewith and for tax withholding as required by Law, and sums for income tax, unemployment insurance, Social Security, or any other withholding required by applicable Law or Regulatory Authority, worker's compensation and overhead associated with SMG employees or subcontractors. SMG shall indemnify and hold Trilogy harmless from any Liabilities to such personnel and from any Liabilities to third parties which may arise with respect to such personnel for any failure by SMG or such personnel to comply with the requirements of this subsection. Whenever SMG utilizes its personnel or subcontractors to perform services for Trilogy pursuant to this Agreement, such personnel or subcontractors shall at all times remain employees or subcontractors of SMG, subject solely to SMG's direction and control.

3.13 Finance and Accounting. SMG will provide the data and reports as defined in Exhibits C and D to enable Trilogy to perform the financial services which are not allocated to SMG through this Agreement. SMG will perform high level review of the 820 prior to supplying Trilogy with a report. Any follow up with DHS regarding the capitation payments and the 820 is Trilogy's responsibility. SMG will process and pay access payments for hospitals, critical care hospitals and ambulatory surgical centers in accordance with the DHS Contract. SMG will also process payments to primary care physicians under the Affordable Care Act primary care enhanced payment program. SMG will maintain statistical records for the completion of Form 1099s, shall distribute Form 1099s, and will complete IRS reporting related to such Form 1099s. Any financial services not listed in Exhibit C as allocated to SMG or are not otherwise designated as an SMG responsibility in this Agreement or by written agreement of the parties are not SMG's responsibility.

3.14 Grievance Program. SMG agrees to comply with Trilogy's Member grievance policy & procedure and immediately notify Trilogy upon receipt of a grievance. No action,

written or otherwise, shall be performed by SMG on a grievance without the prior approval of Trilogy. SMG will designate at least one individual to serve on Trilogy's grievance committee.

3.15 Identify and Manage Disenrollment Requests. On behalf of Trilogy, SMG agrees to collect required documentation and submit requests for disenrollment to the state and/or county as defined in Trilogy's policies & procedures.

3.16 Interpretation and Translation. SMG agrees to coordinate or arrange for interpretation services for Members and send required Member communication materials for translation into the languages and formats necessary to comply with DHS requirements utilizing Trilogy's contracted interpretation and translation vendors.

3.17 Licensure. SMG agrees to obtain and maintain all required Permits (or will have such Permits prior to the provision of any services requiring such Permits) to provide Administrative Services in accordance with applicable Laws.

3.18 Marketing. SMG will contribute to the Trilogy Member outreach and communication plan by listing the following materials distributed by SMG for Member outreach: Member handbook and welcome packet materials. SMG is not responsible for creating or collecting other outreach and marketing activities and materials for Trilogy or for its other subcontractors nor is SMG responsible for writing the overall plan or submitting it to DHS for approval as required by the DHS Contract. SMG will not distribute any marketing or informational materials it supplies to Members under this Agreement without the consent of Trilogy and DHS.

3.19 Member Information. SMG agrees to implement and maintain appropriate measures designed to safeguard Trilogy's Member information and Member information systems. SMG shall adjust its information security program at the request of Trilogy for any relevant, reasonable changes dictated by Trilogy's assessment of risk around its Member information and Member information systems. Confirming evidence that SMG has satisfied its obligations under this subsection shall be made available, during normal business hours, for inspection by Trilogy, anyone authorized by Trilogy, and any Regulatory Authority with jurisdiction over the parties' business activities.

3.20 Notification of Impending Action. SMG agrees to notify and advise Trilogy of any pending, threatened, contemplated or possible Order, litigation, claim or assessment relating to the Business or Trilogy promptly upon receipt, knowledge or notice of such Order, litigation, claim or assessment. Trilogy shall retain the right to initiate and defend all legal actions involving the Business or Trilogy and shall assume all Liabilities related to such actions. SMG shall provide assistance and information to Trilogy and legal counsel necessary to the initiation or defense of such legal actions at Trilogy's sole cost and expense.

3.21 Ownership and Use of Data and Database Retention. Trilogy acknowledges and agrees that SMG retains the right to use all Member data, including, without limitation, Claims data, data compilations, abstracts, aggregations, and statistical summaries (collectively "Member Data") with respect to BadgerCare Plus and/or Medicaid SSI business regardless of by whom such Member Data was prepared solely for the purpose of meeting its obligations under this Agreement. SMG will not sell or otherwise transfer any Member Data nor violate HIPAA privacy but may use de-identified statistical summaries of its performance measures and

outcomes in the area of quality, cost effectiveness of SMG's Administrative Services, savings attained in medical loss ratio or other costs for the purpose of attracting new clients. SMG shall maintain a computerized management information system necessary to carry out its responsibilities under this Agreement which information system complies with requirements of such a system under the DHS Contract. SMG shall provide Trilogy with direct electronic access to its management information system as it relates to Trilogy's business. SMG acknowledges and agrees that Trilogy owns all Member Data. Upon termination of this Agreement SMG and Trilogy shall cooperate reasonably with each other to effect an orderly transition of Trilogy's property, including, but not limited to, Member Data. The database format shall be in a format reasonably acceptable to Trilogy such that all data elements and documentation of said elements are reasonably defined such that Trilogy may retrieve and interpret the data therein; provided however, that SMG shall have no obligation to disclose copyrighted material in violation of any license agreement it may have with a third party.

3.22 Performance Standards. In performing or providing functions and services hereunder, SMG shall use that degree of ordinary care and reasonable diligence that an experienced and qualified provider of similar services would use acting in like circumstances and experience in such matters and in accordance with the standards, practices and procedures established by SMG for its own business. SMG shall perform services according to the performance standards as shown in Exhibit A. SMG agrees to maintain sufficient facilities (in its reasonable judgment) of the kind necessary to perform the services under this Agreement.

3.23 Interpretation of Plan Provisions. SMG shall have no obligation to interpret ambiguities or conflicts that may exist in any provision of the Plan. In providing services hereunder which require the exercise of judgment by SMG, SMG shall perform any such service in accordance with standards and guidelines Trilogy develops and communicates to SMG. In performing any services hereunder, SMG shall, at all times, act in a manner reasonably calculated to be in or not opposed to the best interests of Trilogy.

3.24 Provider Appeals. SMG agrees to comply with Trilogy's provider appeal policy & procedure and adjudicate appeals in accordance with such policy & procedure, as provided to SMG. No exceptions to written Claims processing procedures shall be performed by SMG on a provider appeal without the prior approval of Trilogy. Trilogy maintains the final authority to override its policy & procedure on a provider appeal.

3.25 Provider Contracting. SMG agrees to assist Trilogy or THS in the acquisition and negotiation of provider contracts and MOUs necessary to maintain an adequate provider network as required in the DHS Contract.

3.26 Provider Relations. SMG agrees to work in conjunction with Trilogy to maintain positive working relationships with Trilogy providers and to resolve any provider-related issues.

3.27 Provision of Data. SMG agrees to provide Trilogy all documents and information necessary for Trilogy to comply with Trilogy's requirements for submitting information under the DHS Contract, including, but not limited to, data used for Encounter reporting.

3.28 Quality Assurance. SMG agrees to implement, in cooperation with Trilogy, a quality assurance program intended to enhance the quality and cost effectiveness of Administrative Services provided to Trilogy by SMG under this Agreement, including, but not



limited to, audits of Claims, pre-check edit checks, data integrity reports, customer service response levels, etc. SMG will participate in Trilogy's QAPI Program and any other quality assessment/performance improvement program of Trilogy and contribute required data. SMG will designate one or more individuals to serve on Trilogy's QAPI Program committee to represent the services that SMG provides.

3.29 Record Retention. All records, books and files established and maintained by SMG by reason of its performance of services under this Agreement shall be deemed the property of Trilogy and shall be maintained by SMG in accordance with applicable Laws. Such records should be available, during normal business hours, for inspection by Trilogy, anyone authorized by Trilogy, and any Regulatory Authority with jurisdiction over Trilogy's business activities or their designees. Copies of such records, books and files shall be delivered to Trilogy on demand and at Trilogy's sole cost and expense. Copies of all such records, books and files shall be promptly transferred to Trilogy by SMG upon termination of this Agreement at no cost to Trilogy. SMG shall maintain a policy of record retention consistent with applicable Law.

3.30 Remote Access. SMG agrees to provide users specified by Trilogy with remote access to its benefit administration system for a per user fee. This includes access fees for Trilogy users as well as users within other Persons to which Trilogy delegates administrative duties.

3.31 File Transmissions. SMG agrees to provide Trilogy's designated bank with a positive pay file and to provide Trilogy with a weekly Pended/unpaid Claim file, a weekly Claim file (paid Claims), a monthly premium file, and a monthly eligibility/membership file.

3.32 Provider Database. SMG agrees to provide an updated provider database file to Trilogy on a monthly basis.

3.33 Hardware Support. SMG agrees to provide application hardware support services for its SMG-specific hardware, consisting of: (a) maintenance, (b) disaster recovery services, (c) security (d) operations and (e) operating system used in the capacity of fulfilling the obligations of SMG under this Agreement.

3.34 Application Support. SMG agrees to provide application support for specialized computer software utilized by SMG and accessed by Trilogy or any of its designees consisting of: (a) application maintenance, (b) application support (c) user maintenance and (d) provider/fee loads.

3.35 IPN Access. SMG agrees to provide IPN access to unpaid Claims prior to processing for the purpose of IPN review.

#### **4 OBLIGATIONS OF TRILOGY.**

4.1 Exclusivity. Except as otherwise provided in this Agreement or unless otherwise mutually agreed, during the term hereof, Trilogy shall use SMG exclusively to perform all duties and obligations imposed on SMG under this Agreement and specified in Exhibit C under the column labeled "SMG" and those duties and obligations contained in Exhibit D.

4.2 Audit Representation. Trilogy agrees to designate a Trilogy employee to assist DHS and/or its designated external quality review organization and facilitate audits of any aspect of Trilogy's performance under the DHS Contract.

4.3 Check Stock. Trilogy agrees to provide SMG with all necessary information and access to allow SMG to print checks off of SMG's system.

4.4 Contract Administration. Trilogy agrees to designate an individual to serve as the contract administrator for the DHS Contract. This individual may be an employee of Trilogy or a subcontracted individual operating under the authority of Trilogy. The contract administrator is the liaison between Trilogy and DHS. All information obtained regarding the DHS Contract shall be passed on to SMG to the extent such information relates to any services that are performed by SMG on Trilogy's behalf.

4.5 Contract Compliance. Trilogy agrees to designate a Trilogy employee to serve as compliance officer to oversee Trilogy's compliance with the DHS Contract, applicable Laws and to oversee said compliance by SMG and other Trilogy subcontracted entities as described in the DHS Contract.

4.6 Eligibility, Changes, and Terminations. Trilogy agrees to cause Member eligibility data to be sent to SMG through an electronic file from DHS. Members are deemed to be eligible or not eligible for services as represented on that file. Neither Trilogy nor SMG has any authority to determine eligibility or enroll or disenroll a Member except in the case of exemptions and disenrollment requests under the conditions specified in the DHS Contract.

4.7 Finance and Reporting. Trilogy agrees to prepare and submit all OCI reporting as required by applicable Laws. Trilogy agrees to provide the finances to cover Claims payment on a weekly basis upon receipt by Trilogy or its bank of a positive pay claim file from SMG. Trilogy agrees to provide SMG with the information necessary to reconcile refunds through VBA. Trilogy agrees to collect and reconcile accounts receivable and money recovered due to Subrogation, retro eligibility changes, Claim overpayments, COB, Reinsurance money due, state reimbursement money due or otherwise. Trilogy agrees to prepare and submit the filing of HMO taxes. Any financial services or financial functions not designated as an SMG responsibility in this Agreement remain the responsibility of Trilogy.

4.8 Fraud and Abuse. Trilogy agrees to designate an individual to serve as the fraud and abuse compliance officer to monitor potential fraud and abuse. This individual may be an employee of Trilogy or a subcontracted individual operating under the authority of Trilogy.

4.9 Legal Liability and Accountability. In compliance with the DHS Contract, Trilogy agrees to remain legally liable and accountable to DHS for all functions and responsibilities delegated to SMG.

4.10 Marketing. Trilogy agrees to provide SMG with Trilogy letterhead and envelopes. Trilogy agrees to create marketing plans and materials in accordance with the DHS Contract and other regulatory requirements. Trilogy agrees to be responsible for the development of the Member outreach and communication (marketing) plan, creation and/or collection of related materials as applicable from Trilogy's other subcontractors and submission of the outreach plan for approval to DHS at the time it is due as defined in the DHS Contract.

4.11 Medical Records. If medical records or any supporting documentation are required for any services provided by SMG under this Agreement and there is a cost to obtain such records or documents, Trilogy shall be responsible for paying that cost. If any such records or documents are required by Trilogy or any of its other subcontractors for financial reporting, quality activities, or reporting or any other reason, SMG is not responsible for requesting that information for Trilogy or its other subcontractors or vendors nor is it responsible for paying any cost associated with obtaining such records or documents.

4.12 Member Advocate. Trilogy agrees to employ a Member Advocate to fulfill the obligations and duties of an Advocate as defined in the DHS Contract and to serve as grievance committee chairperson, Member grievance and appeals coordinator and Member/community outreach (health fairs) representative.

4.13 Other Information. Trilogy agrees to furnish SMG with such other information as SMG may reasonably require in order to perform its duties under this Agreement.

4.14 Plan Changes. If a change in administration of the Plan is necessary due to changes required by DHS, Trilogy may request that SMG comply with such a change as soon as is administratively possible, but no later than sixty (60) days after said Plan change is effective. If the Plan change would require SMG to substantially change its computer programs or ongoing Claims procedures as reasonably determined by SMG, Trilogy shall reimburse SMG for the expense of such changes. If the change shall materially affect SMG's obligations or costs to provide Administrative Services hereunder, SMG shall not have any obligation to accommodate the changes unless the parties first agree to such changes. If the parties are unable to agree, Trilogy may contract with a third party to perform such service or otherwise delegate it to a third party.

4.15 Privacy Officer. Trilogy agrees to designate a privacy officer to oversee compliance with HIPAA. This individual may be an employee of Trilogy or a subcontracted individual operating under the authority of Trilogy.

4.16 Subcontractor Oversight. Pursuant to SMG's standing as a subcontractor, and in compliance with the DHS Contract, Trilogy will conduct a formal review of SMG in relation to services at least once per year. Any deficiencies identified or areas of improvement will be identified and SMG will take appropriate corrective action.

## **5 COMPENSATION AND FEES.**

In consideration of SMG's performance of Administrative Services hereunder, Trilogy shall pay SMG administrative fees and charges as specified in Exhibit B.

## **6 CONFIDENTIALITY.**

6.1 SMG. SMG and its employees and agents shall keep confidential, and shall not divulge to any other party, the proprietary, confidential information of Trilogy, including but not limited to, records and data and information relating to such matters as finances, methods of operation and competition, pricing, marketing plans and strategies, equipment and operational requirements and information concerning personnel, customers and suppliers (collectively, the "Trilogy Confidential Information"). Except as otherwise provided in this Agreement, SMG

shall limit access to Trilogy Confidential Information to SMG's employees and agents on an as needed basis in order that they may perform SMG's obligations under this Agreement. With the exception of Member Data to the extent permitted by Section 3.21, SMG shall not make any independent use of any Trilogy Confidential Information (including any copies thereof other than copies of the database required to be retained by SMG pursuant to Exhibit D) and shall promptly return to Trilogy all Trilogy Confidential Information upon termination of this Agreement and the end of any run-out claim period.

6.2 Trilogy. Trilogy and its employees and agents shall keep confidential, and shall not divulge to any other party, confidential information of SMG (the "SMG Confidential Information" and, together with the Trilogy Confidential Information, "Confidential Information"). Trilogy shall not make any independent use of any SMG Confidential Information and shall promptly return to SMG all SMG Confidential Information (including any copies thereof except as required for Trilogy to interpret the database provided by SMG pursuant to Subsection 3.21 of this Agreement) upon termination of this Agreement.

6.3 Exceptions. The requirements of this Section 6 shall not apply to either party's Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by the other party in violation of this paragraph, or (ii) is required to be disclosed by Law, by Order, or by a judicial, administrative or Regulatory Authority and then only to the extent of such required disclosure.

6.4 Injunctive Relief. The parties agree that a violation of this section would cause irreparable damage to the party whose Confidential Information is disclosed or appropriated and that the damaged party would not have an adequate remedy at law. In the event of breach or a threatened breach by a party or its employees or agents of the provisions of this Section 6, the other party shall be entitled to an order enjoining or restraining the breaching party from disclosing, in whole or in part, any Confidential Information without the necessity of posting bond or other security.

## **7 AMENDMENT, TERM AND TERMINATION.**

7.1 Term. The initial term of this Agreement shall be for a period of four (4) years, commencing on the effective date and continuing through December 31, 2017 (the "Initial Term"). Beginning as of January 1, 2018, the term of this Agreement shall automatically be renewed for an additional three (3) year term (a "Renewal Term"), unless one party provides to the other party advance written notice of non-renewal of this Agreement at least three hundred sixty-five (365) days before the end of the then existing term of the Agreement, whether that be the Initial Term or a Renewal Term.

7.2 Amendment. This Agreement may not be amended or modified except by written agreement of the parties which specifically references this Agreement.

7.3 Termination. This Agreement may be terminated upon the occurrence of any of the following events:

7.3.1 Mutual Agreement. This Agreement may be terminated by the mutual written agreement of SMG and Trilogy.

7.3.2 Event of Default. Either party may terminate this Agreement at any time during its Initial Term or any Renewal Term for an Event of Default affecting the other party.

7.3.3 Termination of DHS Contract. This Agreement shall automatically terminate if the DHS Contract terminates for any reason.

7.4 Effect of Termination. In the event of termination or expiration of this Agreement for any reason, the parties agree that each party shall remain entitled to full performance of the duties and responsibilities of the other party arising prior to the effective date of termination.

7.5 Records of Trilogy. In the event of termination of this Agreement, all records deemed the property of Trilogy, as described in Subsection 3.29 of this Agreement, shall be returned to Trilogy, or sent to a third party designated by Trilogy in accordance with this Agreement. SMG shall have the right to retain copies of such property and records as it deems necessary. Within reason, any materials or historical information required by the subsequent administrator will not be withheld.

7.6 Continuing Duties of SMG. On and after the date of termination of this Agreement, except as otherwise provided in this Agreement or as agreed upon by the parties in writing, SMG shall not be obligated to perform any of the services specified in this Agreement or any amendments thereto. In the event of the termination of this Agreement, SMG shall cooperate in good faith with any other organization selected by Trilogy to succeed to SMG's responsibilities under this Agreement or with any insurer providing comparable benefits, and shall take all necessary steps reasonably requested by Trilogy to process and/or settle Claims and relevant administrative matters that are submitted to SMG prior to termination so as to provide for the orderly continuation of benefits and the orderly administration of the Plan.

7.7 Continuing Duties of Trilogy. In the event that the Centers for Medicare and Medicaid Services ("CMS") or DHS seeks in any way to recover from SMG a payment which CMS and/or DHS alleges should have been paid or should not have been paid by the Plan, Trilogy agrees to indemnify, hold harmless and defend SMG from and against any and all Liabilities relating to such payment or recovery attempt regardless of when such recovery action is commenced except to the extent such recovery action arises from SMG's breach of this Agreement.

7.8 Run Out. Upon termination of this Agreement, Trilogy may request that SMG continue to process Claims with dates of service up to and including the date of termination. Trilogy will provide notification to its providers and Members of the change in administration in good faith; however, any Claims received by SMG for dates of service after the termination date will be sent, at Trilogy's expense, to Trilogy or its designee. The run-out period will be twelve (12) months from the termination date. Responsibilities of SMG during the run-out period will consist of:

7.8.1 Claims Processed for dates of service up to and including the termination date, including IPN Claim review, payment, check processing, provider remittances, necessary adjustments or appeals, submission of Reinsurance claims, submission of paid Claims files to Trilogy and 1099 reporting.

7.8.2 Customer service related to Claim activity referenced in Subsection 7.8.1.

7.8.3 Financial and accounting duties as delineated in Subsection 3.13.

7.8.4 Creation and submission of any reports due to DHS during the twelve (12) month run-out period related to data prior to the termination date, under the same conditions as defined in this Agreement.

7.8.5 Creation and submission of a final data dump to the new administrator.

7.8.6 SMG will not mail out new Member enrollment material, including Member handbook/provider directory, welcome letter, PCP selection form or COB inquiry form, in advance of the first effective month with the new administrator.

7.8.7 SMG's aggregate compensation for services during the run-out will be equal to two and one-half (2.5) times SMG's fee in the final month before termination. The run-out during which SMG will provide services shall be limited to a period of twelve (12) months after the termination date. SMG's compensation for services during the run-out period shall be paid as follows: An amount equal to one and one-half (1.5) times SMG's fee in the final month before termination shall be paid by Trilogy at the start of the run-out period. The remaining amount equal to SMG's fee in the final month before termination shall be paid by Trilogy thirty (30) days after the start of the run-out period. Such payment will include all of SMG's costs necessary in the run-out of the book of business; provided that all costs designated as "pass through" in the original Agreement will continue to be the responsibility of Trilogy during the run-out period, in addition to the above-described compensation for services.

7.9 Survival. The provisions of Sections 3.5, 3.21, 3.29, 6, 7, 8, 9, 10.2, 10.3, 10.5, 10.7, 10.8 and 10.11 of this Agreement shall survive the termination of this Agreement.

7.10 Outstanding Debts. Upon termination of this Agreement, any indebtedness owed to the other party shall become immediately due and payable.

7.11 Fees. With respect to the electronic transmission of Claims data to a successor administrator upon termination of this Agreement, such costs are included in the amount specified in Section 7.8. SMG will provide Trilogy or its designee all files, records, and data applicable to Trilogy's membership for the period of time that SMG was providing services under this Agreement. Electronic files of all of Trilogy's data contained in SMG's database in the same database format used prior to the run-out period shall be supplied to Trilogy or its designee within 30 days of the date of termination for all existing data and records and at 30-day intervals for newly processed claims and data until the end of the run-out period if SMG is providing run-out services.

## **8 HOLD HARMLESS AND INDEMNIFICATION.**

8.1 Trilogy hereby agrees to indemnify, hold harmless, and defend SMG from and against any and all Liabilities arising out of the acts or omissions (including any negligence or intentional wrongdoing) of Trilogy and/or its employees or agents related to this Agreement.

8.2 SMG hereby agrees to indemnify, hold harmless, and defend Trilogy from and against any and all Liabilities arising out of the acts or omissions (including any negligence or intentional wrongdoing) of SMG and/or its employees or agents related to this Agreement.

8.3 In the event a party is entitled to indemnity or defense under this Section 8, the indemnified party shall, as a condition to such indemnification, notify the indemnifying party in writing within ten (10) days after receipt of formal notice of any claim or suit against the indemnified party for which the indemnified party seeks indemnification hereunder. Failure to provide notice under this subsection shall relieve the indemnifying party from liability for contractual indemnification under this Agreement to the extent the indemnifying party is materially prejudiced by such failure. Upon accepting tender of a claim under this Section 8, the indemnifying party shall be entitled to make such investigation, settlement or defense of the claim or suit as it deems prudent, in its sole discretion; provided, however, that the indemnifying party shall not enter into any settlement of any claim to the extent it imposes any obligations on the indemnified party without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld, conditioned or delayed).

## 9 DISPUTE RESOLUTION.

The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Wisconsin, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, or the subject matter hereof may not be enforced in or by such court.

WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

## 10 MISCELLANEOUS.

10.1 Assignment and Delegation. Except as otherwise specified herein, a party may not assign or delegate its rights, duties or obligations under this Agreement without the prior written consent of the other party, which consent shall not unreasonably be withheld, conditioned

or delayed; provided that Trilogy may assign this Agreement to an Affiliate of Trilogy and SMG may assign this Agreement to an Affiliate of SMG. This Agreement shall be binding upon and shall accrue to the benefit of the parties hereto and their respective successors and permitted assigns.

10.2 Costs of Enforcement. Should either party employ an attorney for the purpose of enforcing this Agreement or any judgment based thereon in any court, including bankruptcy court and courts of appeal, the prevailing party shall be entitled to receive its reasonable attorneys' fees and costs, whether taxable or not, except as limited by the provisions in Section 9.

10.3 Entire Agreement. This Agreement, including all exhibits and amendments, represents the entire agreement between the parties on the subject matter hereof and supersedes all prior discussion, agreements and understandings between them.

10.4 Force Majeure. Neither of the parties shall be deemed to be in default or in violation of this Agreement if prevented from performing any obligation for any circumstance or reason beyond its control, including, without limitation, acts of God or of the public enemy, flood, storm, strikes, regulatory or legal delay or restraint. In the event all or a portion of the other party's performance is rendered impossible as a result of a force majeure, the parties shall cooperate with each other and use reasonable efforts to remove the impediment, develop a substitute manner of performing and provide for interim performance to continue Trilogy's operations; provided, however, that either party shall have the right to terminate this Agreement upon thirty (30) calendar days written notice if the event commenced at least ninety (90) calendar days prior to the date of notice and is continuing or if full performance under this Agreement remains impossible; and provided further, that, if a force majeure prevents SMG from providing any service hereunder, Trilogy may contract with a third party to perform such service or otherwise delegate it to a third party during the duration of such force majeure.

10.5 Governing Law. This Agreement shall be governed and construed in accordance with the internal laws of the State of Wisconsin.

10.6 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

10.7 Non-solicitation; Non-interference. During the term of this Agreement and one year after termination, neither party, nor its officers, directors, managers, employees or owners, shall, without written consent of the other party, directly or indirectly: (i) encourage, advise or solicit any employee or agent of the other party to leave employment with or discontinue providing services to the other party, (ii) solicit or entice, or in any manner attempt to cause any customer, client or supplier of the other party to curtail or cease doing business with the other party, or (iii) engage in any conduct or activity which is intended or designed to undermine the relationship of the parties established by this Agreement.

10.8 Notice. All notices under this Agreement shall be given in writing and (i) personally delivered, (ii) sent by registered or certified U. S. Mail, return receipt requested and postage prepaid or (iii) sent by private overnight mail courier service. Notices shall be sent to the following addresses:



If to SMG

Scas Management Group, LLC  
3073 S Chase Avenue, Suite 300  
Milwaukee, WI 53207  
Attn: Ron Scasny, President

If to Trilogy:

Trilogy Health Insurance, Inc.  
18000 Sarah Lane, Suite 310  
Brookfield, WI 53227  
Attn: William Felsing, President and CEO

or to other such different or additional address as a party from time to time may designate by written notice to the other party.

10.9 Relationship of the Parties. The parties acknowledge that the relationship between the parties to this Agreement is that of independent contractors. Trilogy and SMG are independent contracting parties and the relationship between them is that of an independent purchaser and an independent supplier of services. Except as specifically provided in this Agreement, neither party shall have the power to bind or incur obligations on behalf of the other party. Neither SMG nor any agent or representative of SMG shall be deemed or construed to be an employee of Trilogy for any reason, including, but not limited to, the Federal Unemployment Tax Act, any workers' compensation act and income tax withholding laws. SMG shall have sole responsibility for the payment of all federal and state income taxes applicable to its services and the services of SMG and its agents and representatives. Neither Trilogy nor any agent or representative of Trilogy shall be deemed or construed to be an employee of SMG for any reason, including, but not limited to, the Federal Unemployment Tax Act, any workers' compensation act and income tax withholding laws. Trilogy shall have sole responsibility for the payment of all federal and state income taxes applicable to its services and the services of Trilogy and its agents and representatives.

10.10 Severability. If any term or provision of this Agreement is found to be unenforceable or void, then such term or provision shall be construed as valid and enforceable to the extent permitted by applicable Laws and the balance of this Agreement shall remain in full force and effect.

10.11 Third-Party Beneficiaries. Except as otherwise provided herein, this Agreement shall inure solely to the benefit of the parties hereto and no other Person shall be a third-party beneficiary of this Agreement.

10.12 Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent or other breach. No term or condition of this Agreement may be waived except in writing by the party charged with the waiver.

10.13 Counterparts and Signature Copies. This Agreement may be signed in counterpart, and any facsimile or scanned signature shall be deemed an original.

10.14 Agreement Is Negotiated Joint Product. The parties were represented by counsel in drafting this negotiated agreement such that the parties shall be deemed to be the joint drafters of this document, and any rule of construction or interpretation favoring one party against the drafter of this Agreement shall not apply.

**The Remainder of this Page is Intentionally Left Blank**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first shown above.

Trilogy Health Insurance, Inc.

By: \_\_\_\_\_  
William Felsing, President and CEO

Scas Management Group, LLC

By: \_\_\_\_\_  
Ron Scasny, President

## EXHIBIT A

### PERFORMANCE STANDARDS

SMG will meet or exceed the following performance standards:

1. 95% of all Clean Claims will be Paid/Denied within 15 calendar days from date of receipt, 98% within 30 days from the date of receipt and the remaining 2% within 60 days from date of receipt.
2. 95% of all Encounters will be processed within 30 calendar days from date of receipt.
3. Reinsurance claim submission will be presented on a monthly basis within fifteen (15) calendar days of the end of each respective month.
4. 100% of all Claim adjustments requested due to incorrectly processed Claims will be Paid/Denied within 30 calendar days from date of request unless delayed by IPN or Trilogy review.
5. Claims accuracy – All Trilogy health claims and stop loss (Reinsurance) claims will be processed with 98% procedural accuracy and 99% financial accuracy.
6. Telephone service during business hours – Average speed of answer of Trilogy telephone calls will be 30 seconds from initial ring. 80% of all calls will be answered within 30 seconds from initial ring. Abandon rate shall not exceed 5%. Call backs and response to voice mail will be made within 24 hours or the next business day.
7. 100% of all reporting including Encounter reporting to Regulatory Authorities required under the DHS Contract shall be submitted within the time frames and deadlines specified therein.
8. 100% of all standard and other management reports specified in this Agreement shall be delivered no more than 5 business days after the close of a month, quarter, year or specific time frame specified in Exhibit D (Reports).
9. SMG's benefit processing system shall be operational 99.8% of the time with the exception of scheduled maintenance down time.

SMG shall not be considered to be out of compliance with any standard above if the deficiency is caused by a matter external to SMG so long as SMG is taking all reasonable steps to resolve such external matter, or which is beyond SMG's control.

SMG shall maintain records of the above matters and commencing six (6) months after the first Member is enrolled, or at such a time as Trilogy's membership reaches 500 Members, whichever occurs later, shall begin to provide quarterly reports on its performance. In addition, Trilogy may audit SMG's records of these matters. At its option, pursuant to such an audit, Trilogy may perform compliance testing as to any of the above 9 performance standards using samples identified by Trilogy from data it requests. In all cases, the parties shall act in good faith to

select data that will be the best, to both parties' knowledge, representation of SMG's performance.

If SMG's performance fails to meet any of the above performance criteria during a period of thirty (30) days or more, it must present an acceptable corrective action plan to Trilogy within ten (10) days of reported failure which includes deadlines designed to remedy the underlying cause of the failure, and to recover promptly any overpayments resulting from the failure. If failure to meet performance standards is the result of a directive from Trilogy, the applicable fee reduction will be waived.

Trilogy and SMG will have quarterly meetings to discuss performance. These meetings may be held in conjunction with the quarterly QAPI Program committee meeting through IPN or may be conducted separately as determined by the parties involved. If SMG does not meet the aforementioned performance standards within the time frame specified and agreed upon in the corrective action plan or no later than the next quarterly meeting, SMG will be subject to the following financial reduction. If any of the 9 standards in this Exhibit A is not met for a calendar quarter, the fee otherwise due to SMG from Trilogy in the next calendar quarter, and the next calendar quarter only, shall be reduced by 1% for each standard not met up to a maximum of 5%, regardless the number of standards not met.

Trilogy may waive the reduction in any case at its discretion but such a waiver does not mean Trilogy cannot reduce the fee in later quarters, or in that quarter as to other performance standards. Trilogy may also conditionally waive the reduction for a specified time frame. Notwithstanding the foregoing, Trilogy retains the option to terminate this Agreement as provided herein.

**EXHIBIT B**

**ADMINISTRATIVE SERVICE FEES WHILE THIS AGREEMENT IS IN FORCE**

Exhibit C Trilogy Health Insurance ASA Scas Management Group, LLC (SMG) Available Services	Service Provided		Included in ASO Fee	2014 Cost if Not Included in ASO Fee	Service applicable only to on-site clients
	No	Yes			
<b>Finance</b>					
Banking (see client specific)	x				
AP & AR - as defined under Client Specific	x				
Invoicing/Billing - as defined under Client Specific	x				
Collections	x				
Payroll - as defined under Client Specific	x				
Financial Statements	x				
Client Specific (List)					
OCJ reports	x				
Capitation payments to providers (currently Herslof - future DentaQuest, Beacon, others TBD) through finance	x				
HMO taxes	x				
Collect and reconcile accounts receivable and money recovered due to subrogation, retro eligibility changes, claim overpayments, COB, reinsurance money due, state reimbursement money due etc. [refunds to Trilogy, info to SMG to put through VBA, Trilogy gets check register] SMG sends out provider refund letters	x				
Initial high level review of the cap payment to membership report (820) and provision of a report to Trilogy		x	x		
Reconciliation of cap payment to membership (820) and any associated follow up with DHS	x				
Pass thru payments to PCPs under ACA Primary Care enhancement payments		x		pass thru	
Hospital, Surgical Centers and CAH Access payment processing		x		pass thru	
Provide bank with a positive pay file		x	x		
Maintain statistical records for completion of Form 1099s, distribute 1099s and complete IRS reporting		x	x		
<b>IT/IS/Support &amp; Data Management</b>					
Provide & Maintain Phone System					x
Provide & Maintain Landline phones					x
Provide & Maintain Servers, Copiers, Printers at SMG					x
Provide & Maintain PCs, Laptops, and/or personal printers used by client's Member Advocate and any other employee or representative on site		x		pass thru	
Provide application hardware support (maintenance, security, operations, operating systems) as it pertains to the claims payment system		x	x		
Provide application software support (maintenance, support, user maintenance, provider/fee loads) as it pertains to the claims payment system		x	x		
Database development and management - as defined under Client Specific		x	x		
Management report generation and submission		x	x		
Data transfers/incoming-outgoing - as defined under Client Specific		x	x		
Data integrity		x	x		
Receive incoming EDI claims - as defined under Client Specific		x			
Produce electronic remittance to providers	x				
Maintain disaster recovery site		x	x		
Client Specific (List)					
Clearinghouse fees associated with incoming EDI Medical claims	x				
Adhoc Report generation for Trilogy		x		\$165/hr	
Adhoc Report creation and generation for Trilogy's other subcontractors utilizing Trilogy data housed in SMG's system		x		\$165/hr	
Pursuant to Section 4L if a change in administration is necessary due to changes required by Wisconsin Medicaid, which would require SMG to substantially change its computer programs or ongoing claims procedures as determined by SMG		x		pass thru unless programming is required	
Cost of encrypted online services provided by SMG compliant with HIPAA Privacy Regulations: Eligibility and benefits inquiry, claims inquiry if Availity is not used	not a current DHS requirement - will be addressed later				
BMI and SBIRT Report		x	x		
Capitation Payment Listing Report		x	x		
Certified Provider Listing		x	x		
CLIA Extract		x	x		

Exhibit C Trilog Health Insurance ASA Scas Management Group, LLC (SMG) Available Services	Service Provided		Included in ASO Fee	Cost if Not Included in ASO Fee	Service applicable only to on-
	No	Yes			
<b>IT/IS/Support &amp; Data Management Continued</b>					
State Reporting Incoming (receive and/or utilize and/or pass on to IPN as appropriate to ASA activities of SMG and IPN) continued		x	x		
COB Carrier List		x	x		
COB Extract		x	x		
Coordination of Benefits Report		x	x		
Encounter Submission Status Report		x	x		
Encounter Type Summary Report		x	x		
Enrollment (HIPAA 834) - pass to IPN, Beacon, Herslof, DentaQuest		x	x		
Enrollment History Report		x	x		
HealthCheck Report		x	x		
Healthy Birth Outcome Report		x	x		
HIPAA 820		x	x		
HMO Asthma Report		x	x		
HMO Diabetes Report		x	x		
HMO Lead Testing Report		x	x		
HMO Recertification Reports		x	x		
Kick Payments		x	x		
Max Fee Schedules		x	x		
Max Fee Schedules LTC		x	x		
MCO Final Enrollment Report		x	x		
MCO Initial Enrollment Report		x	x		
Pharmacy Extract		x	x		
Pharmacy Lock-In Report		x	x		
Preferred Doctor and Hospital Report		x	x		
Remittance Advice		x	x		
Remittance Advice Final Transactions		x	x		
Remittance Advice Summary		x	x		
SSI and CLA Continuity of Care Report		x	x		
SSI DME Claim History Report		x	x		
SSI and CLA Pharmacy Claim History Reports		x	x		
SSI Predictive Risk Report		x	x		
SSI and CLA Provider Claim History Report		x	x		
Subset of certified MA providers by type and specialty for HMO XML files		x	x		
Units Per Day & Diagnosis Restriction Report		x	x		
State Reporting Outgoing		x	x		
Affirmative Action and Civil Rights Compliance Letter of Assurance to Trilog		x	x		
Affirmative Action and Civil Rights Compliance Plan when SMG meets the size requirements under Section 3B to Trilog		x	x		
Trilog's Affirmative Action and Civil Rights reporting to DHS	x				
CLA assessment tracking	x				
Coordination of Benefits Report		x	x		
Court Ordered Birth Costs Report		x	x		
Encounter Reporting		x	x		
Formal/Informal Grievance Experience Summary Report		x	x		
Individual Ambulatory Surgical Center Access Payment Data		x	x		
Individual Critical Access Hospital Access Payment Data		x	x		
Individual Hospital Access Payment Data		x	x		
Medical Loss Ratio Report	x				
Maternity Kick Payment Report		x	x		
Member Communication and Outreach Plan (SMG supply information to Trilog on the materials it sends out under this Agreement. Creation and submission of the report is not		x	x		
Neonatal ICU Patient Care Data		x	x		
Newborn Report		x	x		
Provider Facility and Network Report		x	x		
Summary Ambulatory Surgical Center Access Payment Report		x	x		
Summary Critical Access Hospital Payment Report		x	x		
Summary Hospital Access Payment Report		x	x		
Ventilator Dependent Report		x	x		
Semi-annual service utilization and annual CRT reconciliation of sub-acute psychiatric CD		x	x		



Exhibit C Trilog Health Insurance ASA Scas Management Group, LLC (SMG) Available Services	Service Provided		Included in ASO Fee	Cost if Not Included in ASO Fee	Service applicable only to on-site clients
	No	Yes			
<b>IT/IS/Support &amp; Data Management Continued</b>					
State Reporting Outgoing continued		x	x		
Semi-annual and annual evaluation report of Medical Home Pilot	x				
Annual overall HMO performance reporting Section N of the HMO contract	x				
HEDIS reports	x				
Detailed plan for the implementation of the prenatal medical home in Trilog's service area	x				
Any report not mentioned in this list		x		negotiable, cost based on nature of the report	
Provide web access to Trilog providers that minimally allows review of eligibility and other DHS required information	x				
Provision of a weekly pended/unpaid and paid claim file to Trilog		x	x		
Provision of a monthly eligibility/membership file - pass on 834 'as is' to Beacon, DentaQuest, Herslof		x	x		
Provision of a monthly eligibility/membership file - pass on 834 'scrubbed' to Trilog and monthly premium file		x	x		
<i>Provision of pharmacy data to Physicians - waiting for DHS workgroup to further define</i>					
Provision of a monthly updated provider data base file to Trilog		x	x		
Report ACA payments to DHS which matches PCP file sent to HMO		x	x		
Provision of application hardware support (maintenance, security, operations, operating systems) as it pertains to the claims payment system		x	x		
Application support (maintenance, support, user maintenance, provider/fee loads)		x	x		
Provide access to SMG's claims processing system to Trilog, Trilog's subcontractors or others designated by Trilog		x		\$500 per month per user	
Provide files, reports, extracts or other data and/or materials to Trilog's HEDIS vendor or other designated entity required from SMG's system vendor as well as SMG's administrative costs for such services		x		pass thru	
System enhancements requested by Trilog to comply with any requirements from Wisconsin Department of Health Services in relation to its contract with same or requested by Trilog for any other reason		x		\$165/hour	
<b>Compliance</b>					
Client Specific (List)					
Compliance with client's contracted obligations as they relate to services provided by SMG through this Agreement		x	x		
Compliance with Medicaid as it relates to services provided by SMG through this Agreement if applicable		x	x		
Trilog Compliance with DHS contract, Medicaid and EQRO in all aspects, ensuring everything required in DHS contract is allocated and accounted for through all the subcontractors and/or Trilog staff	x				
Identification and ongoing compliance with changes/additions to Medicaid benefits and corresponding allocation, ASA amendments if necessary, through the affected subcontractors	x				
Subcontractor oversight (SMG, IPN, Beacon, DentaQuest) for compliance with DHS contract as well as with their respective ASAs and performance agreements	x				
Compliance Officer	x				
HIPAA Officer	x				
Host EQRO audits, coordinate subcontractors	x				
Evaluation of compliance in any area of the contract not specifically listed as part of SMG's responsibilities in this ASA or in any other regulatory area	x				
<b>Administrative &amp; Operations</b>					
Mailroom (incoming and outgoing mail)	x				x
Receptionist	x				x
Copying, Filing, Scanning, Faxing, Printing and Assembly as it relates to this Agreement is included in ASO fees unless specified elsewhere		x	x		
Account Management (with employer group or similar)	N/A				
Print provider materials (contracts, amendments, other communication) - as defined under Client Specific		x			
Mail provider materials - as defined under Client Specific		x			
Print and mail provider checks and remits		x	x		
Postage for provider checks and remits		x	x		
Provide materials for posting on Trilog's website as they relate to services in this Agreement		x	x		

Exhibit C Trilog Health Insurance ASA Scas Management Group, LLC (SMG) Available Services	Service Provided		Included in ASO Fee	Cost if Not Included in ASO Fee	Service applicable only to on-site clients
	No	Yes			
<b>Administrative &amp; Operations continued</b>					
Client Specific (List)					
Create, print and distribute provider directory		x		printing and postage costs pass thru	
Trilogy to supply Trilogy branded envelopes and other printed materials for use with services provided under this Agreement	x			or pass thru cost if SMG purchases them	
<b>Human Resources</b>					
Recruiting & Hiring Clients' staff - as described under client specific	x				
Orientation of Clients' staff - as described under client specific	x				
Training of Clients' staff - as described under client specific	x				
Maintenance of Clients' Employee Handbook - as described under client specific	x				
Consultation with, and assistance to, employees' supervisors/managers with regard to discipline and termination	x				
Submission of workers' compensation incident reports to client's workers' compensation carrier	x				
Administration of and/or Consultation on Employment Law, statutes, regulations and other legal services are not provided by SMG	x				
Client Specific (List)					
<b>Provider Relations and Contracting</b>					
Work in conjunction with THS to provide the acquisition and negotiation of provider contracts and MOUs necessary to maintain an adequate provider network as defined in the DHS Contract		x	x		
Work in conjunction with Trilogy to maintain positive working relationships with Trilogy providers and to resolve any related issues		x	x		
Client Specific (List)					
Interpretation/Translation Contracts	x				
Subrogation Contracts	x				
Reinsurance Contracts	x				
Physician Contracts		x	x		
Ancillary Contracts		x	x		
Facility Contracts		x	x		
MOUS		x	x		
PNCC		x	x		
School Based Services		x	x		
Bureau Milwaukee Child Welfare		x	x		
51.42 boards		x	x		
Health Departments		x	x		
Birth to 3 Agencies		x	x		
Targeted Case Management		x	x		
Evaluation of effectiveness or compliance of provider contracting	x				
Evaluation of effectiveness or compliance with network adequacy, distances, wait times etc.	x				
<b>Claims Processing</b>					
Paper and EDI claim entry and adjudication		x	x		
Claim/Provider appeals		x	x		
Voids/Refunds/Adjustments processed through VBA		x	x		
Apply COB to claims		x	x		
Recoupments/claim overpayments processed through VBA		x	x		
Collections of accounts payable due to claim overpayments, retro eligibility, COB recovery or other categories	x			see finance section	
Coordinate and support subrogation with client's subrogation vendor		x	x	cost of services pass thru at Trilogy's contracted rate	
<b>Membership/Enrollment</b>					
Enrollment - accept and process paper and/or web enrollment	N/A				
Investigate other insurance coverage, maintain member records		x	x		
Conduct new enrollee outreach/communication - as defined under Client Specific		x			
Conduct and prepare evaluation of member satisfaction surveys - as defined under Client Specific	N/A				
Print member materials - as defined under Client Specific		x			
Mail new member materials - as defined under Client Specific		x			
Send out Cobra notifications	N/A				

Exhibit C Trilog Health Insurance ASA Scas Management Group, LLC (SMG) Available Services	Service Provided		Included in ASO Fee	Cost if Not Included in ASO Fee	Service applicable only to on-site clients
	No	Yes			
<b>Membership/Enrollment continued</b>					
<b>Client Specific (List)</b>					
Verify appropriate members and coordinate with DHS for disenrollment of inappropriate members		x	x		
Collect information required for newborn reporting		x	x		
Create, print and distribute member handbook, welcome packet materials under new enrollee outreach/communication plan		x		member handbook printing and postage costs pass thru	
Submit Member Handbook and Marketing materials to DHS for prior approval		x	x		
Submit the member communication materials handled by SMG to Trilog's contracted translation* vendor		x		cost of translation pass thru at Trilog's vendor rates	
Evaluation of effectiveness of PCP assignment related to condition management	x				
Assignment or Re-assignment of PCPs based on chronic conditions or in relation to case management activities, 2014 HMO contract section 1 (3)(a)	x				
<b>Customer Service</b>					
Call Center (Incoming/outgoing calls) Monday through Friday, 8:00AM to 5:00PM		x	x		
<b>Client Specific (List)</b>					
Coordinate interpretation services for members who need them through Trilog's contracted vendors during regular office hours, Monday through Friday 8:00AM to 5:00PM		x	x	cost of services pass thru at Trilog's contracted rate	
Provide 24 hour phone coverage as defined in DHS contract	x				
<b>Other Client Specific Functions</b>					
Participate in QAPI Committee – Provide an SMG representative and present/provide internal reports on SMG performance guarantees		x	x		
Provide client work space - ONE furnished cubicle on site at SMG (does not include computer, private printer if desired, wireless headset, or cell phone if desired)		x	x	Costs will apply for additional or different	
Member Advocacy - state program participation	x				
Receive, manage, resolve Member appeals and grievances - grievance committee	x				
Community outreach, health fairs	x				
Coordination with health departments, community based organizations, BMCW, community agencies/services	x				
<b>Other Client Specific Functions continued</b>					
QAPI Program administration - credentialing, medical director, committees, UM, DM, CM, member health education/promotion, HEDIS quality member/provider support/service reminders/programs, CLA member service reminders and data collection from providers, Performance Improvement Projects (submission to state for approval, conducting, writing report, submitting report),	x				
Pregnant women program - healthy birth outcomes - medical home administration	x				
SSI Member assessments and care coordination,	x				
CLA Member health needs assessments	x				
Develop Marketing plans and overall marketing strategy. Perform the marketing activities, identify and staff events, purchase marketing objects (cups, pens, misc items) for distribution at events, represent Trilog in the community, on panels, in media etc.	x				
Designated contact for TCM, PNCC, SBS	x				
Dental programs, dental provider contracting, administration (claims processing, prior authorization, customer service etc.)	x				
Behavioral health programs, behavioral health provider contracting, administration (claims processing, prior authorization etc.)	x				
Vision health programs, vision provider contracting, administration (claims processing etc.)	x				
Member Appointment Compliance in 2014 HMO Contract section 1(3)(a)(4)	x				
Administer any portion of the Pharmacy Lock-In Program	x				

## EXHIBIT D

### REPORTS

#### Incoming Reports

- Receive, format, store all incoming reporting from the State as listed in Exhibit C and other sources into a format accessible by Trilogy (and IPN where appropriate) within 30 calendar days of receipt of said reports. Receive and format provider files, fee schedules, and data sets necessary for the administration of Trilogy's business.
- Receive and format 834 from DHS and load into database necessary for the administration of Trilogy's business.

#### Outgoing Reports

- Standard Management Reports as listed below.
- Standard DHS required reports as outlined in the DHS Contract and as listed in Exhibit C and sent to the recipient designated, within the time frames, deadlines, formats and to the departments specified in the DHS Contract. Where a report is dependent on data received from other Trilogy subcontractors or Trilogy, SMG will format and submit the report to DHS within 10 business days of receipt of data from Trilogy's other subcontractors or Trilogy in an acceptable format. SMG is only responsible for formatting and submitting the report. SMG is not responsible for the content or validity of the data contained in such reports nor the timeliness of submission if data is not received within the time frame specified or is not in an acceptable format.
- Reports requested by Trilogy's other subcontractors to support activities identified under Trilogy's administrative services agreements with those entities subject to the provisions in Exhibits B and C.

#### Standard Management Reports

Generate, distribute and provide accompanying analysis of results if requested.

- 834 report summary of the initial and final file distributed via email at time of receipt from DHS.
- Quarterly SMG Performance Standards.
- Ad hoc management reports as requested subject to the provisions in Exhibit B.

Provide a complete data dump of VBA, including providers, Claims, Members, authorizations, etc. to Trilogy on a monthly basis to allow Trilogy to run its own financial and other reports as needed or desired.

**EXHIBIT E**  
**BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Agreement ("Agreement"), effective January 1, 2014 is made between Trilogy Health Insurance, Inc. ("Covered Entity") and Scas Management Group, LLC ("SMG" or "Business Associate") and is adopted to comply with the requirements of the Privacy Rule at 45 CFR Parts 160 and 164 issued pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as well as HITECH, which was signed into law on February 17, 2009 as part of P.L. 111-005.

Whereas, SMG and Covered Entity have entered into one or more than one agreement under which SMG is to arrange for the provision of various health care treatment, payment or operations services (as defined in 45 C.F.R. §164.501) ("Underlying Agreements");

Whereas, SMG receives individually identifiable health information from covered entities in order to provide Covered Entity with various services as described in the Underlying Agreements and this health information is Protected Health Information ("PHI,") (as defined in 45 C.F. R. §164.501) is subject to protection under HIPAA;

Whereas, Trilogy Health Insurance, Inc. is a Covered Entity as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule");

Whereas, SMG, as a recipient of PHI from the Covered Entity, is a "Business Associate" as that term is defined in the Privacy Rule;

Whereas, pursuant to the Privacy Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

Whereas, the purpose of this Agreement is to comply with the requirements of the Privacy Rule, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §164.504(e), 45 CFR § 164.314(a), as well as HITECH, and this Agreement is hereby incorporated into any and all Underlying Agreements currently between SMG and Covered Entity.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

**1. DEFINITIONS**

Terms used in this Agreement that are specifically defined in HIPAA or the HITECH Act shall have the same meaning as set forth in HIPAA and HITECH. A change to HIPAA or HITECH which modifies any defined term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement.

1.1 **“Breach of Unsecured PHI”** means the acquisition, access, use, or disclosure of protected health information in a manner not permitted under the Privacy Rule which compromises the security or privacy of the protected health information. 45 CFR § 164.402.

1.2 **“Business Associate”** shall mean the entity described above. Where the term “business associate” appears without an initial capital letter, it shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR § 160.103.

1.3 **“Covered Entity”** shall mean the above stated “Covered Entity.” It shall also have the meaning given to the term under the Privacy Rule, including, but not limited to 45 CFR § 160.103.

1.4 **“Disclose” or “Disclosure”** means, with respect to Covered Entity's Protected Health Information, release, transfer, providing access to or divulging to a person or entity not within Business Associate.

1.5 **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, as amended, and related HIPAA regulations (45 CFR. Parts 160-164).

1.6 **“HITECH”** means the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.

1.7 **“Individual”** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR § 160.103. It shall also include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.8 **“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information, and Security Standards for the Protection of Electronic Protected Health Information (the “Security Rule”), that are codified at 45 CFR Parts 160 and 164, Subparts A, C, and E and any other applicable provision of HIPAA, and any amendments thereto, including HITECH.

1.9 **“Protected Health Information”** and/or **“PHI”** shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR § 164.103, and shall include, without limitation, any PHI provided by Covered Entity or created or received by Business Associate on behalf of Covered Entity. Unless otherwise stated in this Agreement, any provision, restriction, or obligation in this Agreement related to the use of PHI shall apply equally to **Electronic PHI (“EPHI”)**.

1.10 **“Required By Law”** shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR § 164.103, and any additional requirements created under HITECH.

1.11 **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or his designee.

1.12 “**Secured PHI**” shall mean PHI that is rendered unusable, unreadable, or indecipherable to unauthorized individuals, as defined by the Secretary pursuant to 45 CFR § 164.402.

1.13 “**Security Incident**” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 CFR § 164.304.

1.14 “**Services Agreement**” shall mean the underlying agreement(s) that outline the terms of the services that Business Associate agrees to provide to Covered Entity and that fall within the functions, activities or services described in the definition of “Business Associate” at 45 CFR § 160.103.

1.15 “**Unsecured PHI**” shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402 of HITECH. 45 CFR § 164.402.

## 2. BUSINESS ASSOCIATE OBLIGATIONS

2.1 Business Associate agrees that it shall only use and disclose PHI in accordance with the terms of this Agreement or as is Required By Law.

2.2 Business Associate shall not use or disclose PHI except for the purpose of performing Business Associate’s obligations to Covered Entity as outlined by the underlying Services Agreement, as such use or disclosure is limited by this Agreement.

2.3 Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule. So long as such use or disclosure does not violate the Privacy Rule or this Agreement, Business Associate may use PHI: (a) as is necessary for the proper management and administration of Business Associate’s organization, or (b) to carry out the legal responsibilities of Business Associate, as provided in 45 CFR § 164.504(e)(4).

2.4 Business Associate will ensure that any agents, including subcontractors, to whom it provides PHI agree in writing to the same restrictions and conditions, including but not limited to those relating to termination of the contract for improper disclosure, that apply to Business Associate with respect to such information. Further, Business Associate shall implement and maintain sanctions against agents and subcontractors, if any, that violate such restrictions and conditions. Business Associate shall terminate any agreement with an agent or subcontractor, if any, who fails to abide by such restrictions and obligations. Business Associate shall not provide any PHI to any third party or subcontract any Services without Covered Entity’s express written permission. Business Associate agrees to enter into a Business Associate Agreement with each of its subcontractors pursuant to 45 CFR § 164.308(b)(1) and 45 CFR § 164.504(e)(5).

2.5 Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of PHI or EPHI, other than as provided by this Agreement, and to implement administrative, physical, and technical safeguards as required by sections 164.306, 164.308, 164.310, 164.312, 164.314 and 164.316 of title 45, Code of Federal

Regulations and HITECH to protect the confidentiality, integrity, and availability of EPHI or PHI that Business Associate creates, receives, maintains, or transmits, in the same manner that such sections apply to the Covered Entity. 45 CFR § 164.306(c).

2.6 To the extent that Business Associate is to carry out Covered Entity's obligation under the Privacy Rule, Business Associate agrees to comply with the Privacy Rule requirements in the performance of such obligation. 45 CFR § 164.504(e)(2)(ii)(H).

2.7 Business Associate agrees to adopt the technology and methodology standards required in any guidance issued by the Secretary pursuant to HITECH §§ 13401-13402.

2.8 Business Associate agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement and to notify Covered Entity of any Breach of Unsecured PHI, as required under and in accordance with 45 CFR § 164.410, within fourteen (14) days of learning of such Breach.

2.9 Business Associate shall make PHI in Designated Record Sets that are maintained by Business Associate or its agents or subcontractors, if any, available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524.

2.10 Within ten (10) days of receipt of a request from Covered Entity for an amendment of PHI or a record about an Individual contained in a Designated Record Set, Business Associate or its agents or subcontractors, if any, shall make such PHI available to Covered Entity for amendment and shall incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526. If an Individual requests an amendment of PHI directly from Business Associate or its agents or subcontractors, if any, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any denial of amendment of PHI maintained by Business Associate or its agents or subcontractors, if any, shall be the responsibility of Covered Entity. Upon the approval of Covered Entity, Business Associate shall appropriately amend the PHI maintained by it, or any agents or subcontractors.

2.11 Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of PHI, Business Associate and any agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528. Except in the case of a direct request from an Individual for an accounting related to treatment payment or operations disclosures through an electronic health record, if the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, if any, Business Associate shall within five (5) business days of a request notify Covered Entity about such request. Covered Entity shall either inform Business Associate to provide such information directly to the Individual, or it shall request the information to be immediately forwarded to Covered Entity for compilation and distribution to such Individual. In the case of a direct request for an accounting from an Individual related to treatment, payment or



operations disclosures through electronic health records, Business Associate shall provide such accounting to the Individual in accordance with and effective on the applicable date set forth in HITECH § 13405(c). Business Associate shall document disclosures as set forth in 45 CFR § 164.528. Notwithstanding Section 4.4, Business Associate and any agents or subcontractors shall continue to maintain the information required for purposes of complying with this Section 2.11 for a period of six (6) years after termination of the Agreement.

2.12 Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule. Business Associate shall notify Covered Entity regarding any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary, and upon request by Covered Entity, shall provide Covered Entity with a duplicate copy of such PHI.

2.13 Business Associate and its agents or subcontractors, if any, shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure as required by 45 CFR § 164.502(b)(1).

2.14 Business Associate acknowledges that Business Associate has no ownership rights related to the PHI.

2.15 Except as permitted in Section 4.4 or unless otherwise instructed by Covered Entity, Business Associate and its subcontractors or agents, if any, shall retain any PHI throughout the term of the Agreement in accordance with Covered Entity's document retention schedule.

2.16 During the term of this Agreement, Business Associate shall notify Covered Entity of any actual Security Incident or any other use or disclosure not provided for by this Agreement as soon as reasonably practicable but not more than fourteen (14) days after learning about such Incident or use or disclosure.

2.17 Within ten (10) business days of a written request by Covered Entity, Business Associate and its agents or subcontractors, if any, shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement and HITECH; provided, however, that (i) Business Associate and Covered Entity mutually agree in advance upon the scope, location and timing of such an inspection; and (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection.

2.18 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(I)(B).

2.19 If Business Associate knows of a pattern of activity or practice by the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Agreement, Business Associate will take reasonable steps to cure the breach or end the

violation. If such steps are unsuccessful within a period of 30 days, Business Associate will either: 1) terminate the Agreement, if feasible; or 2) report the problem to the Secretary. 45 CFR § 164.504(e)(1)(iii).

### **3. COVERED ENTITY OBLIGATIONS**

3.1 Covered Entity shall provide Business Associate with the notice of any privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

3.2 Covered Entity shall provide Business Associate with notice of any changes to, revocation of, or permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted uses or disclosures, within a reasonable period of time after Covered Entity becomes aware of such changes to or revocation of permission.

3.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 CFR § 164.522.

3.4 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

### **4. TERMINATION**

4.1 The term of this Agreement shall be effective as of the date of this Agreement and continue until terminated by Covered Entity or any underlying Services Agreement expires or is terminated. Any provision related to the use, disclosure, access, or protection of EPHI or PHI or that by its terms should survive termination of this Agreement shall survive termination.

4.2 If Business Associate breaches this Agreement, Covered Entity may, in its discretion: (i) immediately terminate this Agreement where cure of such breach is not possible; (ii) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not promptly cure the breach or end the violation within a period not to exceed 30 days; or (iii) report the violation to the Secretary if neither termination nor cure is feasible.

4.3 Covered Entity may terminate this Agreement effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, HITECH, or other security or privacy laws or (ii) there is a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH, or other security or privacy laws in any administrative or civil proceeding in which Business Associate is involved.

4.4 Upon termination of this Agreement for any reason, Business Associate shall return or, at Covered Entity's request, destroy all PHI that Business Associate or its agents or subcontractors, if any, still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall explain to Covered Entity why conditions make the return or destruction of such PHI not feasible. If Covered Entity agrees that

the return or destruction of PHI is not feasible, Business Associate shall retain the PHI, subject to all of the protections of this Agreement, and shall make no further use of such PHI. If Business Associate elects to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

4.5 If it is infeasible for Business Associate to recover all of the PHI that is in the possession of its agents or subcontractors, Business Associate shall provide Covered Entity with a written description of the PHI that remains in the possession of its agents or subcontractors and the reasons why the return or destruction of that information is infeasible. Business Associate shall require its agents and subcontractors to extend all of the protections of this Agreement to all PHI that remains in their possession and require them to limit further uses and disclosures of that PHI to those purposes that make the return or destruction infeasible for as long as the PHI remains in their possession. Business Associate shall provide to Covered Entity written assurances that it has fulfilled its obligations under this provision. The parties agree that the obligations described in this paragraph shall survive the termination of this Agreement by either party for any reason.

## 5. MISCELLANEOUS

5.1 A reference in this Agreement to a section in the Privacy Rule means the Privacy Rule section as in effect or as amended.

5.2 Business Associate will comply with all appropriate federal and state security and privacy laws, to the extent that such laws apply to Business Associate or are more protective of Individual privacy than are the HIPAA laws.

5.3 All notices which are required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficient in all respects if delivered personally, by electronic mail or electronic facsimile (with a confirmation by registered or certified mail placed in the mail no later than the following day), or by registered or certified mail, postage prepaid, addressed to a party as indicated below:

If to Scas Management Group:

Attention: President  
Scas Management Group, LLC.  
3073 S Chase Ave, Suite 300  
Milwaukee, WI 53207

If to Covered Entity:

Attention: CEO/President  
Trilogy Health Insurance, Inc.  
18000 W. Sarah Lane, Suite 310  
Brookfield, WI 53045

Notice shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered or transmitted by electronic mail or electronic facsimile and, as to communications made by United States mail, on the third (3rd) day after mailing. The above addresses may be changed by giving notice of such change in the manner provided above for giving notice.

5.4 If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions hereof shall continue in full force and effect.

5.5 This Agreement contains the entire understanding between the parties hereto and shall supersede any other oral or written agreements, discussions and understandings of every kind and nature, including any provision in any Services Agreement. No modification, addition to or waiver of any right, obligation or default shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. No delay or failure of either party to exercise any right or remedy available hereunder, at law or in equity, shall act as a waiver of such right or remedy, and any waiver shall not waive any subsequent right, obligation, or default.

5.6 This Agreement shall be governed by Wisconsin law without respect to its conflict of law principles.

5.7 The parties agree to take such action as is necessary to amend this Agreement from time-to-time as is necessary for compliance with the requirements of the HIPAA Privacy Rule, Security Rule, and related provisions.

5.8 This Agreement and any underlying Services Agreement are the only agreements between the parties related to the subject matter in this Agreement. To the extent there is any inconsistency between the terms and conditions of this Agreement and any Services Agreement, the terms and conditions of the Agreement shall govern.

5.9 This Agreement is binding upon the successors and assigns of the parties herein. This Agreement is intended to confer rights and responsibilities only on the Covered Entity and Business Associate and does not create or vest rights or remedies in any third party.

5.10 Nothing in this Agreement shall create any relationship between Covered Entity and Business Associate other than as independent contractors. No employee or agent of either party may be deemed an employee or agent of the other party by reason of this Agreement.

5.11 Business Associate's obligation to protect the confidentiality of the Protected Health Information, including the requirements in Section 5.9, shall survive the termination of this Agreement and shall continue for as long as Business Associate maintains Protected Health Information.

**Trilogy Health Insurance, Inc.**

**Scas Management Group, LLC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: William Felsing

Name: Ron Scasny

Title: CEO/President

Title: President

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

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