

Exhibit [X]: MCO Indian Addendum

1. Purpose of Addendum; Supersession.

This Addendum is intended to become part of any written agreement between the Managed Care Organization (as identified in the signature block of this Addendum) and the Indian Health Care Provider (as identified in the signature block of this Addendum) for the provision of services to enrollees under the terms of the Washington Apple Health – Fully Integrated Managed Care Contract between the MCO and the Washington State Health Care Authority, as may be amended from time to time (such agreement between the MCO and the Indian Health Care Provider herein referred to as the “MCO Provider Agreement”). This Addendum applies special terms and conditions necessitated by federal law and regulations to the MCO Provider Agreement. To the extent that any provision of the MCO Provider Agreement (including any other addendum thereto) is inconsistent with any provision of this Addendum, the provisions of this Addendum shall supersede all such other provisions.

2. Definitions.

For purposes of the MCO Provider Agreement (including any other addendum thereto) and this Addendum, the following terms and definitions shall apply:

- a. “Contract health services” has the meaning given in the Indian Health Care Improvement Act (IHCIA) Section 4(5), 25 U.S.C. § 1603(5).
- b. “American Indian or Alaska Native” has the meaning given to “Indian” in 42 C.F.R. § 447.50(b)(1).
- c. “Indian Health Care Provider” means a health program administered by the Indian Health Service, a tribal health program, an Indian tribe or a tribal organization to which funding is provided pursuant to 25 U.S.C. § 47 (commonly known as the “Buy Indian Act”), or an urban Indian organization that receives funding from the IHS pursuant to Title V of the IHCIA (Pub. L. 94-437), as amended.
- d. “Indian Health Service or IHS” means the agency of that name within the U.S. Department of Health and Human Services established by the IHCIA Section 601, 25 U.S.C. § 1661.
- e. “Indian tribe” has the meaning given in the IHCIA Section 4(14), 25 U.S.C. § 1603(14).
- f. “Managed care organization” or “MCO” has the meaning given in the 42 C.F.R. § 438.2.
- g. “Tribal health program” has the meaning given in the IHCIA Section 4(25), 25 U.S.C. § 1603(25).
- h. “Tribal organization” has the meaning given in the IHCIA Section 4(26), 25 U.S.C. § 1603(26).
- i. “Urban Indian organization” has the meaning given in the IHCIA Section 4(29), 25 U.S.C. § 1603(29).

3. Description of Indian Health Care Provider.

The Indian Health Care Provider identified in the signature block of this Addendum is (check the appropriate box):

The Indian Health Service.

An Indian tribe that operates a health program under a contract or compact to carry out programs, services, functions, and activities (or portions thereof) of the IHS pursuant to the ISDEAA, 25 U.S.C. § 450 et seq.

- /_/ A tribal organization that operates a health program under a contract or compact to carry out programs, services, functions, and activities (or portions thereof) of the IHS pursuant to the ISDEAA, 25 U.S.C. § 450 et seq.
- /_/ A tribe or tribal organization that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. § 47 (commonly known as the Buy Indian Act).
- /_/ An urban Indian organization that operates a health program with funds in whole or part provided by IHS under a grant or contract awarded pursuant to Title V of the IHCA.

4. Cost-Sharing Exemption for Indians; No Reduction in Payments.

The MCO shall not impose any enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge shall be imposed against an American Indian/Alaska Native who is furnished an item or service directly by IHS, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under purchased/referred care. Payments due to IHS, an Indian Tribe, Tribal Organization, or Urban Indian Organization, or a health care provider through referral under purchased/referred care for the furnishing of an item or service to an American Indian/Alaska Native who is eligible for assistance under the Medicaid program may not be reduced by the amount of any enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge. 42 U.S.C. § 1396o(j).

5. Enrollee Option to Select the Indian Health Care Provider as Primary Care Provider.

The MCO agrees that any American Indian/Alaska Native otherwise eligible to receive services from the Indian Health Care Provider may be allowed to choose the Indian Health Care Provider as the American Indian's/Alaska Native's primary care provider if the Indian Health Care Provider has the capacity to provide primary care services to such American Indian/Alaska Native, and any referral from such Indian Health Care Provider shall be deemed to satisfy any coordination of care or referral requirement of the MCO. 42 U.S.C. § 1396u-2(h).

6. Agreement to Pay Indian Health Provider.

The MCO agrees to pay the Indian Health Care Provider for covered Medicaid managed care services in accordance with the requirements set out in Sec. 1932(h) of the Social Security Act. 42 U.S.C. § 1396u-2(h).

7. Persons Eligible for Items and Services from Indian Health Care Provider.

- a. The parties acknowledge that eligibility for services at the Indian Health Care Provider's facilities is determined by federal law, including the IHCA, 25 U.S.C. § 1601, et seq. and/or 42 C.F.R. Part 136. Nothing in this agreement shall be construed to in any way change, reduce, expand, or alter the eligibility requirements for services through the Indian Health Care Provider's programs.
- b. No term or condition of the MCO Provider Agreement or any addendum thereto shall be construed to require the Indian Health Care Provider to serve individuals who are ineligible under federal law for services from the Indian Health Care Provider. The MCO acknowledges that, pursuant to 45 C.F.R. § 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for services from the Indian Health Care Provider. The Indian Health Care Provider acknowledges that the nondiscrimination provisions of federal law

may apply.

8. Applicability of Other Federal Laws.

Federal laws and regulations affecting the Indian Health Care Provider include but are not limited to the following:

- a. The IHS as an Indian Health Care Provider:
 - i. Anti-Deficiency Act, 31 U.S.C. § 1341;
 - ii. ISDEAA, 25 U.S.C. § 450 et seq.;
 - iii. Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671-2680;
 - iv. Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653;
 - v. Federal Privacy Act of 1974 (“Privacy Act”), 5 U.S.C. § 552a, 45 C.F.R. Part 5b;
 - vi. Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
 - vii. Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. Parts 160 and 164; and
 - viii. IHCIA, 25 U.S.C. § 1601 et seq.
- b. An Indian tribe or a Tribal organization that is an Indian Health Care Provider:
 - i. ISDEAA, 25 U.S.C. § 450 et seq.;
 - ii. IHCIA, 25 U.S.C. § 1601 et seq.;
 - iii. FTCA, 28 U.S.C. §§ 2671-2680;
 - iv. Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653;
 - v. Privacy Act, 5 U.S.C. § 552a, 45 C.F.R. Part 5b; and
 - vi. HIPAA, 45 C.F.R. Parts 160 and 164.
- c. An urban Indian organization that is an Indian Health Care Provider:
 - i. IHCIA, 25 U.S.C. § 1601 et seq. (including without limitation pursuant to the IHCIA Section 206(e)(3), 25 U.S.C. § 1621e(e)(3), regarding recovery from tortfeasors);
 - ii. Privacy Act, 5 U.S.C. § 552a, 45 C.F.R. Part 5b; and
 - iii. HIPAA, 45 C.F.R. Parts 160 and 164.

9. Non-Taxable Entity.

To the extent the Indian Health Care Provider is a non-taxable entity, the Indian Health Care Provider shall not be required by the MCO to collect or remit any federal, state, or local tax.

10. Insurance and Indemnification.

- a. Indian Health Service. The IHS is covered by the FTCA which obviates the requirement that IHS carry private malpractice insurance as the United States consents to be sued in place of federal employees for any damages to property or for personal injury or death caused by the negligence or wrongful act or omission of federal employees acting within the scope of their employment. 28 U.S.C. §§ 2671-2680. Nothing in the MCO Provider Agreement shall be interpreted to authorize or obligate any IHS employee to perform any act outside the scope of his/her employment. The IHS shall not be required to acquire insurance, provide indemnification, or guarantee that the MCO will be held harmless from liability.
- b. Indian Tribes and Tribal Organizations. An Indian Health Care Provider which is an Indian tribe, a tribal organization, or employee of a tribe or tribal organization shall not be required to obtain or maintain professional liability insurance to the extent such Indian Health Care Provider is covered by the FTCA pursuant to federal law (Public Law 101-

512, Title III, § 314, as amended by Public Law 103-138, Title III, § 308 (codified at 25 U.S.C. § 450f note); and 25 C.F.R. Part 900, Subpart M; 25 U.S.C. §458aaa-15(a); and 42 C.F.R. § 137.220). Nothing in the MCO Provider Agreement or any addendum thereto shall be interpreted to authorize or obligate such Indian Health Care Provider or any employee of such provider to operate outside of the scope of employment of such employee. Such Indian Health Care Provider shall not be required to acquire insurance, provide indemnification, or guarantee that the MCO will be held harmless from liability.

- c. Urban Indian organizations. To the extent an Indian Health Care Provider that is an urban Indian organization is covered by the FTCA pursuant to Section 224(g)-(n) of the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act, Public Law 104-73, (codified at 42 U.S.C. § 233(g)-(n)), 42 C.F.R. Part 6, such Indian Health Care Provider shall not be required to obtain or maintain professional liability insurance. Nothing in the MCO Provider Agreement or any addendum thereto shall be interpreted to authorize or obligate such Indian Health Care Provider or any employee of such Indian Health Care Provider to operate outside of the scope of employment of such employee. Such Indian Health Care Provider shall not be required to acquire insurance, provide indemnification, or guarantee that the MCO will be held harmless from liability.

11. Licensure of Health Care Professionals.

- a. Indian Health Service. States may not regulate the activities of IHS-operated health care programs nor require that IHS health care professionals be licensed in the state where they are providing services, whether the IHS employee is working at an IHS-operated facility or has been assigned to a health care program of a tribe, tribal organization, or urban Indian organization. The parties agree that during the term of the MCO Provider Agreement, IHS health care professionals shall hold state licenses in accordance with applicable federal law, and that IHS facilities shall be accredited in accordance with federal statutes and regulations.
- b. Indian tribes and tribal organizations. Section 221 of the IHCA, 25 U.S.C. § 1621t, exempts a health care professional employed by an Indian tribe or tribal organization from the licensing requirements of the state in which such tribe or organization performs services, provided the health care professional is licensed in any state. The parties agree that these federal laws apply to the MCO Provider Agreement and any addendum thereto.
- c. Urban Indian organizations. To the extent that any health care professional of an urban Indian organization provider is exempt from state regulation, such professional shall be deemed qualified to perform services under the MCO Provider Agreement and any addendum thereto, provided such employee is licensed to practice in any state. The parties agree that this federal law applies to the MCO Provider Agreement and any addendum thereto.

12. Licensure of Indian Health Care Provider; Eligibility for Payments.

To the extent that the Indian Health Care Provider is exempt from state licensing requirements, such Indian Health Care Provider shall not be required to hold a state license to receive any payments under the MCO Provider Agreement and any addendum thereto.

13. Dispute Resolution.

In the event of any dispute arising under the MCO Provider Agreement or any addendum thereto, the parties agree to meet and confer in good faith to resolve any such disputes. The laws of the United States shall apply to any problem or dispute hereunder that cannot be resolved by and between the parties in

good faith. Notwithstanding any provision in the MCO Provider Agreement or any addendum thereto to the contrary, the Indian Health Care Provider shall not be required to submit any disputes between the parties to binding arbitration.

14. Governing Law.

The MCO Provider Agreement and any addendum thereto shall be governed and construed in accordance with federal law of the United States. In the event of a conflict between such agreement and any addendum thereto and federal law, federal law shall prevail. Nothing in the MCO Provider Agreement or any addendum thereto shall subject an Indian tribe, tribal organization, or urban Indian organization to state law to any greater extent than state law is already applicable.

15. Medical Quality Assurance Requirements.

To the extent the MCO imposes any medical quality assurance requirements on its network providers, any such requirements applicable to the Indian Health Care Provider shall be subject to Section 805 of the IHCA, 25 U.S.C. § 1675.

16. Claims Format.

The MCO shall process claims from the Indian Health Care Provider in accordance with Section 206(h) of the IHCA, 25 U.S.C. § 1621e(h), which does not permit an issuer to deny a claim submitted by an Indian Health Care Provider based on the format in which submitted if the format used complies with that required for submission of claims under Title XVIII of the Social Security Act or recognized under Section 1175 of such Act.

17. Payment of Claims.

The MCO shall pay claims from the Indian Health Care Provider in accordance with federal law, including Section 206 of the IHCA (25 U.S.C. §1621e), and 45 C.F.R., Part 156, Subpart E. The MCO shall be deemed compliant with Section 206 to the extent the MCO and Indian Health Care Provider mutually agree to the rates or amounts specified in the MCO Provider Agreement as payment in full.

18. Hours and Days of Service.

The hours and days of service of the Indian Health Care Provider shall be established by the Indian Health Care Provider. At the request of the MCO, such Indian Health Care Provider shall provide written notification of its hours and days of service.

19. Purchased/Referred Care Requirements.

The Indian Health Care Provider shall be able to make other referrals to in-network providers and such referrals shall be deemed to meet any coordination of care and referral obligations of the MCO.

20. Sovereign Immunity.

Nothing in the MCO Provider Agreement or in any addendum thereto shall constitute a waiver of federal or tribal sovereign immunity.

21. Endorsement.

An endorsement of a non-federal entity, event, product, service, or enterprise may be neither stated nor

implied by the IHS provider or IHS employees in their official capacities and titles. Such agency names and positions may not be used to suggest official endorsement or preferential treatment of any non-federal entity under this MCO Provider Agreement.

22. Permitted Uses and Disclosures of Protected Health Information.

The MCO acknowledges that an Indian tribe may be a public health authority or health oversight agency with respect to permitted uses and disclosures of protected health information under 45 C.F.R. 164.512.

[Remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the undersigned have executed this MCO Indian Addendum on the dates set forth below.

MANAGED CARE ORGANIZATION:

INDIAN HEALTH CARE PROVIDER:

Signer Name:

Signer Title:

MCO Name:

Date Signed:

Signer Name:

Signer Title:

Indian Health Care Provider Name:

Date Signed: