Confidential - Trade Secret

EXHIBIT C

AMENDED AND RESTATED
SECURITY RESERVE AMENDMENT TO

SOUNDPATH HEALTH CONTRACTOR AND PARTICIPANT
MEDICARE ADVANTAGE AGREEMENT

THIS AMENDED AND RESTATED SECURITY RESERVE AMENDMENT (this "**Amendment**") is made as of _____, 2012 by and among, Soundpath Health, Inc., a Washington corporation ("**SPH**") and Northwest Physicians Network of Washington, LLC, a Washington limited liability company (the "**Participant**").

RECITALS

WHEREAS, SPH and Participant are parties to that certain Contractor and Participant Medicare Advantage Agreement dated March 1, 2007, as amended (the "**MA Agreement**");

WHEREAS, SPH and Participant entered into that certain Security Reserve Amendment to the MA Agreement effective as of February 1, 2011;

WHEREAS, on the date hereof the parties are also amending the MA Agreement and such MA Agreement contemplates that certain funds be placed into an interest bearing reserve account to secure certain obligations of Participant under the MA Agreement;

WHEREAS, contemporaneously with the execution of this Amendment, the Participant, SPH, Physicians of Southwest Washington, L.L.C., and **[CHI Newco B]** entered into that certain Amended and Restated Shareholder Agreement dated as of the date hereof (the "**Shareholder Agreement**"); and

WHEREAS, SPH and Participant believe it would be in their mutual best interests to further amend the MA Agreement as set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and agreements of the parties contained in this Amendment to the MA Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Establishment of Security Reserve Account**.

(a) Security Reserve Account. Promptly following the execution of this Amendment, the Participant shall deposit $4,451,808 (the "**Initial SRA Deposit**") into an account established at a financial institution approved by SPH (the "**Bank**") to establish a Security

Reserve Account ("**SRA**") to secure obligations of the Participant under the MA Agreement.

(b) Bank Account/Security Interest. The SRA shall be in the name of the Participant and all interest accruing on such account may be disbursed to the Participant as it is earned. The Participant shall grant SPH a security interest in all sums maintained in such account to secure the Participant's obligations under this MA Agreement, which security interest shall be in accordance with the terms of an Account Control Agreement acceptable to SPH, and attached hereto as **Attachment A**.

(c) Terms of Bank Account. The Participant shall direct the Bank to mail a duplicate monthly statement of all transactions and balances in the SRA to SPH simultaneously with the mailing of the statement to the Participant. SPH shall have the exclusive right to direct and provide instructions to the Bank with respect to the disposition of all funds in the SRA; provided, however, that such right may only be exercised in accordance with the terms of this Amendment.

(d) Condition to the MA Agreement. The SRA shall remain in place until the later of (i) termination of the MA Agreement or (ii) satisfaction of all financial obligations of the Participant arising under the MA Agreement.

2. Definition of Paid Claims, Claims Trends and IBNR.

(a) "**Paid Claims**" shall mean all provider liabilities that are paid (fee-for-service and capitation) on behalf of SPH Medicare Advantage Members that are the financial risk of the Participant and shall not include expenses that are the direct risk of SPH.

(b) "**Claims Trend**" shall mean the increase in the utilization and cost inflation which was used in SPH's most recent Medicare Advantage bid submission to the Centers for Medicare & Medicaid Services ("**CMS**").

(c) The Parties agree to use eighty-five percent (85%) of the Participant's incurred but not reported ("**IBNR**") claims for determining the per member reserve ("**PMR**") factor to compensate for the redundancy in IBNR reserves calculations.

3. Security Reserve Account Required Balance.

(a) After establishing the Initial SRA Deposit, the Participant agrees to maintain a required balance on deposit each month in the SRA in accordance with this Amendment (the "**SRA Required Balance**"). The SRA Required Balance will be calculated as follows:

(i) Audited financial statements will be submitted to SPH's Chief Financial Officer by December 15th of each year. If no audited financial statements are available, or audited financial statements do not separately report IBNR by SPH's Medicare Advantage line of business ("**SPH MA IBNR**"), IBNR shall be determined to be one and one-half (1.5) months of the Participant's average monthly Paid Claims from the

previous calendar year.

(ii) The PMR factor is determined annually as of the Participant's audited financial statement date and it is calculated as follows:

(SPH MA IBNR X 85% X (1 + Claims Trend)) divided by the number of covered SPH Medicare Advantage members.

(iii) SPH will determine the Participant's new PMR factor by December 31st of each year, which will become effective on the first (1st) day of each January of each year thereafter. Beginning each January 1, and on the first (1st) day of each calendar quarter thereafter, the new PMR factor will be multiplied by each final calendar quarter month's then current enrollment to calculate the SRA Required Balance for that calendar quarter. Each calendar quarter, the SRA Required Balance will change based on the change in the number of SPH Medicare Advantage members.

(b) In order to maintain the SRA Required Balance, the Participant shall make an additional contribution each calendar quarter in an amount equal to the SRA Required Balance less the actual current SRA Balance (the "**Quarterly SRA Contribution**"). To the extent that SPH does not directly deposit the Quarterly SRA Contribution, the Participant agrees to independently make such deposits to the SRA by the tenth (10th) day of the end of the calendar quarter.

(c) If the Quarterly SRA Contribution is not made in accordance with **Section 3(b)** above, SPH, in its sole discretion, shall have the right to withhold the Quarterly SRA Contribution from the quarterly capitation payment and deposit the funds into the SRA, with such deposits being reported as withholds from the Participant's quarterly capitation payment. The exercise of such right by SPH shall not be deemed to be an election of any remedy or the forfeiture of any rights by SPH. All of SPH's rights are cumulative and the exercise of any remedy shall not preclude the exercise of any other remedies available to SPH under this Amendment, the MA Agreement and applicable law.

4. <u>Additional Security Reserve Account Contributions</u>.

(a) SPH and the Participant recognize that the SRA may require additional cash contributions from time to time in order to accomplish the purpose and business for which it is established and to meet regulatory requirements. The Participant will be required to make one or more additional cash contributions to the SRA from time to time (the "**Additional Contribution**") pursuant to any one or more of the following determinations:

(i) In such amounts as may be required from time to time by the Washington State Office of the Insurance Commissioner (the "**OIC**") for the Participant to maintain adequate capital in accordance with the MA Agreement and to satisfy all applicable law;

(ii) In such amounts as determined by the OIC to satisfy any and all risk

based capital requirements applicable to SPH and the Participant;

(iii) In such amounts as may be required from time to time by CMS in accordance with the MA Agreement and to satisfy all applicable law; or

(iv) In such amounts as determined by an actuarial firm retained by SPH that is knowledgeable in the Medicare Advantage line of business in the state of Washington (the "**SRA Actuarial Firm**").

(b) Upon any such determination that an Additional Contribution is required by the Participant, an authorized officer of SPH will, by written notice, call for any such Additional Contribution to be made by the Participant to the SRA. Within thirty (30) calendar days following the date the written notice is issued to the Participant that an Additional Contribution is required, the Participant must contribute the Additional Contribution, in cash, to the SRA.

(c) In the event that the SRA Actuarial Firm determines that an Additional Contribution is required by the Participant, the Participant may, by written notice to SPH within fifteen (15) calendar days after receiving written notice of the requirement for an Additional Contribution from an authorized officer of SPH, request a formal appeal of such determination. If such a formal appeal is requested, SPH and the Participant shall mutually agree upon the selection of an independent actuarial firm that is knowledgeable in the Medicare Advantage line of business in the state of Washington (the "**Third Party Actuarial Firm**"); provided, however, that the Participant shall be responsible for any and all fees and charges of the Third Party Actuarial Firm. The Third Party Actuarial Firm shall perform an analysis of the necessary balance to be maintained in the SRA in order to satisfy all of the financial obligations of the Participant arising under the MA Agreement. The necessary balances of the SRA as determined by the SRA Actuarial Firm and the Third Party Actuarial Firm will be averaged (the "**Averaged Amount**") and, in the event the Averaged Amount results in a deficit of the SRA balance, such deficit will constitute the Participant's required Additional Contribution. The Participant shall then make such Additional Contribution within thirty (30) calendar days following the determination of the Averaged Amount.

(d) Notwithstanding anything herein to the contrary, if any Additional Contribution is not made in accordance with this **Section 4**, SPH, in its sole discretion, shall have the right to withhold and deposit in the SRA any amounts due and owed to the Participant in order to satisfy any Additional Contribution required to fund the SRA, as determined by the SRA Actuarial Firm. The exercise of such right by SPH shall not be deemed to be an election of any remedy or the forfeiture of any rights by SPH. All of SPH's rights are cumulative and the exercise of any remedy shall not preclude the exercise of any other remedies available to SPH under this Amendment, the MA Agreement and applicable law.

5. <u>Default</u>.

(a) If the Participant fails or refuses for any reason to make in a timely manner any part or all of the Quarterly SRA Contribution as required by **Section 3** of this Amendment (the "**Unpaid Quarterly SRA Contribution**") or if the Participant fails or refuses for any reason to make in a timely manner any part or all of an Additional Contribution as required by **Section 4** of this Amendment (the "**Unpaid Additional Contribution**"), the Participant will be in default hereunder and will be deemed to be a "**Defaulting Participant**" and the Unpaid Quarterly SRA Contribution, the Unpaid Additional Contribution or other unpaid amount will constitute an obligation of the Defaulting Participant to SPH. If the Defaulting Participant remains in default to SPH for more than thirty (30) calendar days, SPH may exercise all rights to the amounts deposited in the SRA, including, but not limited to, the right to foreclose on its security interest in the SRA.

(b) If the Defaulting Participant remains in default to SPH for more than thirty (30) calendar days, such continuing default shall constitute a default under the Shareholder Agreement, providing the remedies set forth therein, including, among other things, the right to dilute the Defaulting Participant's percentage ownership of all of the issued and outstanding common shares and preferred shares of SPH owned by the Defaulting Participant.

(c) The exercise of SPH's rights with respect to the SRA shall not be deemed to be an election of any remedy or the forfeiture of any rights by SPH. All of SPH's rights are cumulative and the exercise of any remedy shall not preclude the exercise of any other remedies available to SPH under this Amendment, the MA Agreement and applicable law.

6. <u>Payments and Disbursements from the Security Reserve Account</u>.

(a) <u>Security Reserve Overfunding</u>. In the event of changes in enrollment or cost of care, if the balance of the SRA exceeds the SRA Required Balance, the Participant may request a withdrawal from the SRA in such amount as will not reduce the balance below the SRA Required Balance. Such a request for withdrawal will not be unreasonably denied and SPH shall approve or disapprove of such withdrawal within ten (10) calendar days of a written request from the Participant to SPH.

(b) <u>Temporary Withdrawal from SRA</u>. The Participant has the right to request a withdrawal of funds from the SRA in order to pay claims for which the Participant has insufficient cash on hand ("**Temporary Withdrawal**"). Such a request will not be unreasonably denied by SPH. However, the need for such withdrawal will trigger a financial review by SPH to assure that the Participant has sufficient financial resources as to be able to satisfy its obligations under the MA Agreement, including, but not limited to, its ability to retain capitated risk. The Participant will repay the Temporary Withdrawal by paying at least twenty percent (20%) of the amount of the Temporary Withdrawal within sixty (60) calendar days after the date of the Temporary Withdrawal. The Participant shall repay the entire amount of such withdrawal within one-hundred twenty (120) calendar days after the date of the Temporary Withdrawal. The Participant has the option to repay the Temporary Withdrawal directly to the SRA or request that SPH deduct the amount from the Participant's monthly capitation payment and deposit this amount into the Participant's SRA. If the Participant does not elect a repayment method, or fails to make repayment, SPH has the right to repay the amount of the Temporary Withdrawal to the

SRA by withholding the Participant's monthly capitation payments and depositing the funds in the SRA. In any event, failure by the Participant to pay the entire amount of the Temporary Withdrawal within thirty (30) calendar days after repayment is due shall constitute an event of default pursuant to **Section 5** of this Amendment.

(c) Application of SRA by SPH. SPH shall be entitled to apply the funds in the SRA to satisfy the Participant's financial obligations under the MA Agreement. The exercise of SPH's rights with respect to the SRA shall not be deemed to be an election of any remedy or the forfeiture of any rights by SPH. All of SPH's rights are cumulative and the exercise of any remedy shall not preclude the exercise of any other remedies available to SPH under the MA Agreement and applicable law.

(d) Withdrawals by SPH. SPH may unilaterally withdraw funds from the SRA for the purpose of processing claims that are Participant's responsibility and have not been paid by the Participant after notice to process and pay claims has been made to the Participant, provided that SPH gives the Participant and the Bank ten (10) calendar days written notice of such intent.

7. Termination of the MA Agreement and Claims Run-Out.

(a) In the event of termination of the MA Agreement, SPH and the Participant shall ensure an orderly winding down of claim payments, IBNR, and the SRA by the entity processing claims on behalf of SPH and the Participant.

(b) If the Participant fails to pay claims run out, SPH shall be able to draw down the SRA to pay for claims run out and the Participant will waive any and all rights to prevent SPH from using the SRA to pay for claims.

(c) The Participant agrees to reimburse SPH for any of its members' Medicare claims run out that the SRA does not cover and that SPH is legally obligated to pay.

(d) In the event of termination of the MA Agreement, and after **Sections 7(a)** through **7(c)** above have been satisfied, to the extent there is a positive balance in the SRA, such SRA funds shall be applied to any and all obligations of the Participant under the MA Agreement.

8. Participant Dispute Resolution.

(a) In the event there is a dispute under this Amendment, the parties shall first attempt to resolve the matter through informal good faith discussions. In the event the parties determine that the matter cannot be resolved informally, either party may initiate the right of non-binding mediation.

(b) Upon initiation of mediation, the parties shall agree upon a mediator. The mediator's fees shall be borne in equal shares by the parties. Unless agreed otherwise, all other related costs incurred by the parties shall be the sole responsibility of the party incurring the cost. The mediator shall, in consultation with the parties, determine a process and schedule for the

mediation.

(c) In the event the parties cannot resolve the matter through non-binding mediation, either party may institute an action in the Superior Court of King County, Washington or the U.S. District Court for the Western District of Washington. By mutual consent, the parties may forego non-binding mediation and proceed directly to an action in the Superior Court of King County, Washington or the U.S. District Court for the Western District of Washington.

9. Other Terms and Conditions of the MA Agreement. SPH and the Participant agree that all other terms and conditions of the MA Agreement remain unchanged and in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to the MA Agreement be executed by its duly authorized officers as of the effective date hereof.

SOUNDPATH HEALTH, INC.

By:_____
Name:_____
Title:_____

NORTHWEST PHYSICIANS NETWORK OF WASHINGTON, LLC

By:_____
Name:_____
Title:_____

ATTACHMENT A

ACCOUNT CONTROL AGREEMENT