

## HEALTHIEST YOU SERVICES AGREEMENT

This HEALTHIEST YOU Services Agreement (“Agreement”) is made and entered into on this 1<sup>st</sup> day of July, 2016 (“Effective Date”), by and between **HY Holdings, Inc.**, a Delaware corporation (“HEALTHIEST YOU”), with its principal place of business at 5350 E High St, Suite 350, Phoenix, AZ 85054 and, **City of Maricopa**, with its principal place of business at 39700 W Civic Center Plaza, Maricopa, AZ 85134. HEALTHIEST YOU and COMPANY be referred to individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

**WHEREAS**, HEALTHIEST YOU has entered into an agreement with a professional association that employs and/or contracts with physicians who are licensed and qualified healthcare providers (the “Provider”), and for which HEALTHIEST YOU provides various administrative and operational services to the Provider;

**WHEREAS**, the physicians who are employed by, or under contract with, the Provider form a network which facilitates cross-coverage medical consultations via telephone or web-based video to individuals and groups desiring to purchase such cross-coverage consultations when their primary care physician is not available;

**WHEREAS**, HEALTHIEST YOU is engaged in the business of providing internet healthcare resources to connect individuals with Provider in real time, via live streaming video, telephone, and/or secure e-mail for the diagnosis and treatment of patients over the Internet, as well as providing other types of administrative services as further described herein (the “Program”);

**WHEREAS**, COMPANY sponsors a medical benefit plan or similar program for the benefit of its employees and their dependents;

**WHEREAS**, COMPANY desires to offer the Program to its employees and their dependents on an integrated basis with COMPANY’s healthcare programs and/or as a standalone service to such employees and their dependents; and

**WHEREAS**, HEALTHIEST YOU desires to provide its Program to COMPANY’s employees and certain dependents pursuant to the terms of this Agreement.

**NOW, THEREFORE**, in exchange for the promises made hereunder and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### AGREEMENT

1. **Recitals.** The above recitals are incorporated herein by reference.
2. **Definitions.** The following terms, which are not otherwise defined herein, shall have the meanings set forth below:
  - 2.1 “Cross-Coverage Consultation” means a physician who provides patient care, via telephone or web-based video, for another physician when the other physician is not available.
  - 2.2 “Eligible Dependents” means a “dependent,” as defined under COMPANY’s medical benefit plan or similar program sponsored by COMPANY.

2.3 “Participant” means an individual who is an employee or an Eligible Dependent covered under a medical benefit plan or similar program sponsored by COMPANY.

2.4 “PEPM” is an abbreviation for “Per Employee Per Month,” which the Parties recognize as a common term in the health care industry. For purposes of this Agreement, PEPM is defined as the applicable rate paid by COMPANY to HEALTHIEST YOU on a monthly basis for each Participant.

### 3. **The Program.**

3.1 **Telemedicine** includes access to the licensed physicians associated with Provider to provide Cross-Coverage Consultations. The physicians are selected by Provider to provide patient and physician interaction, whereby the physician diagnoses the patient’s ailment, recommends therapy, and if necessary and where appropriate, writes a Non-DEA controlled prescription. The Program is designed to provide cross-coverage physician access in the states where Participants live and travel. The Program also includes access to Provider Search, Pharmacy Discount Program, Deductible Management, Wellness Content and a Smartphone App.

3.1.1 **Online Provider Search** includes access to search providers in their individual insurance plan network for in-person consultation. Participant may access physician specifics such as geographic location, patient star rating, languages spoken, education and bio.

3.1.2 **Pharmacy Discount Program** is access to the most comprehensive prescription drug-pricing tool. Participants are able to compare drug prices at over 60,000 local and mail-order pharmacies, discover free coupons and savings tips, and find huge savings on drugs not covered by insurance plans – and may even find savings versus your co-payment.

3.1.3 **Deductible Management** allows Participant to enter their insurance plan information for the purposes of viewing and tracking their insurance deductible.

3.1.4 **Wellness Content** includes access to healthy and relevant wellness content, delivered via smartphone app to Participant at their time of need.

3.1.5 **Smartphone App** is available for download on Android and Apple iOS platforms. Participant must register app prior to accessing its features.

3.2 The method of delivering Cross-Coverage Consultations by the physicians under the Program may be over the telephone, Internet or any other telecommunication device or network, whether now in existence or developed during the term of this Agreement.

3.3 Each physician shall be appropriately licensed and/or certified to practice in their respective healthcare professions. Furthermore, Provider and all associated physicians shall be technologically proficient and trained in Cross-Coverage Consultations. Physician consultations under the Program are not delivered by Internet questionnaires.

3.4 It is understood by the Parties that HEALTHIEST YOU does not exercise control or direction over the means, methods, or manner by which the licensed physicians exercise professional judgment in the provision of medicine provided through the Program and in accordance with this Agreement. The licensed physicians provide services based on their sole professional judgment. It is further understood that the licensed physicians will not prescribe any Drug Enforcement Agency (DEA) controlled substances or narcotics and operates subject to state regulations. HEALTHIEST YOU is not required to guarantee that the Participant will receive a prescription.

3.5 Each licensed physician will prepare and maintain medical records in accordance with all applicable federal, state and local laws and regulations, including the requirements of each governing board where the licensed physician is licensed and/or certified. All medical records pertaining to the provision of Services through the Program shall be the property of the applicable physician.

3.6 Only Participants who have completed the necessary steps to create the legally mandated doctor/patient relationship (as described herein) will be eligible to receive Cross-Coverage Consultations under the Program. Those steps include:

3.6.1 Completing a comprehensive medical history disclosure, either in paper form, online or by telephone with a designated representative of the Program. In the event a Participant fail to complete the medical history disclosure, that Participant will not have access to Provider's physicians and HEALTHIEST YOU will so advise the Participant when he/she accesses the service.

3.6.2 Agreeing to HEALTHIEST YOU's Informed Patient Consent and Release Form confirming an understanding that the Provider is not obligated to accept Participant as a patient, and that Participant's eligibility under the Program may be cancelled by HEALTHIEST YOU at any time without recourse by the Participant, and acknowledging that the Participant understands that the Program provides Cross-Coverage Consultations when the Participant's primary care physician is not available.

#### **4. COMPANY Responsibilities.**

4.1 COMPANY will:

4.1.1 Use commercially reasonable efforts to advertise the Program to potential Participants at the prices outlined in this Agreement, using HEALTHIEST YOU's 4.1.1 Program content, as approved in advance by (and only as approved by) HEALTHIEST YOU. COMPANY acknowledges that it has no authority to modify the program content without the prior written approval of HEALTHIEST YOU. COMPANY agrees that any and all materials used or created by COMPANY or its employees or agents to describe the Program must be approved by HEALTHIEST YOU prior to any distribution by COMPANY, such materials include, but are not limited to, those that are in written form, on websites, radio, television, and/or sent by email or fax. In addition, COMPANY hereby

authorizes HEALTHIEST YOU to communicate directly with the Participants for the purpose of: (A) promoting the Program to the Participants; and (B) treatment, payment and health care operations of HEALTHIEST YOU.

4.1.2 Where applicable, cooperate with HEALTHIEST YOU in facilitating all interaction with COMPANY's third party administrator (TPA) to ensure timely payment of all claims pursuant to Exhibit A herein.

4.1.3 Cooperate with HEALTHIEST YOU in completing an implementation form;

4.1.4 Provide HEALTHIEST YOU (or ensure that its third party administrator provides HEALTHIEST YOU) with all membership eligibility files for each Participant. HEALTHIEST YOU shall specify the format for such files, and the COMPANY's submissions will be in compliance with that format.

## 5. **HEALTHIEST YOU Responsibilities.**

### 5.1 HEALTHIEST YOU will:

5.1.1 Provide and grant to the COMPANY a non-exclusive, non-transferable, limited license to use the "HEALTHIEST YOU" branded Program (including all materials developed or provided to COMPANY by HEALTHIEST YOU related to the Program, its marketing, implementation and use) during the term of this Agreement (notwithstanding the foregoing, however, HEALTHIEST YOU's toll-free telephone number shall not be a dedicated number for the COMPANY's Participants only and shall remain the property of HEALTHIEST YOU at the termination of this Agreement);

5.1.2 Provide and maintain an adequate system, forms and other resources for Participants to: (a) complete the required medical history disclosure online, and (b) access and agree to HEALTHIEST YOU's Informed Patient Consent and Release Form.

### 5.2 HEALTHIEST YOU further agrees to:

5.2.1 Adhere solely, with respect to telephone Cross-Coverage Consultations, to the service level standards set forth in Exhibit B;

5.2.2 Maintain a database of the Participants' information (in an electronic format that is compliant with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), including but not limited to those changes adopted and incorporated by Section XIII of the American Recovery and Reinvestment Act of 2009 (ARRA) known as Health Information Technology for the Economic and Clinical Health (HITECH) Act, and update the database periodically with information

provided by the COMPANY or its third party administrator as new Participants are enrolled;

5.2.3 Provide to COMPANY or its third party administrator, upon reasonable request, reports of the Program utilization rates of each Participant as identified by its COMPANY identification number; or on a date and/or in a format mutually agreed upon by the Parties.

5.2.4 Provide initial training for Participants at the time the Program is implemented. Notwithstanding the foregoing, COMPANY acknowledges and agrees that: (a) COMPANY will be responsible for providing training and administering the Program to the Participants; and (b) if COMPANY requests HEALTHIEST YOU's physical presence and participation in onsite activities such as health fairs, annual enrollment, benefit training etc., every effort will be made to accommodate COMPANY's request. HEALTHIEST YOU will not charge any incremental fee's for this participation provided that it is reasonable, scheduled a minimum of four (4) weeks in advance and doesn't conflict with other pre-scheduled work. HEALTHIEST YOU will bill COMPANY for usual and customary travel expenses including food, lodging and transportation within ten (10) days after the onsite visit has occurred. COMPANY shall have the option of using designated travel planning services or in house agents who can secure more favorable rates and direct bill out of pocket expenses. A copy of COMPANY's Corporate Travel Policy should be shared in advance of such requested travel with HEALTHIEST YOU personnel.

5.2.5 Ensure that Provider maintains reasonable procedures to confirm that Providers are duly licensed and qualified to practice their respective professions in the state where the Services are provided.

## **6. Data Transmission Security**

Data transmission security is the process of sending data from one computer system to another in a secure manner so that only the intended recipient of the data receives the data and the data sent is identical to the data received. When ePHI (Electronic Personal Health Information) is transmitted over an electronic communications network i.e. "the internet", transmissions of ePHI to and from HEALTHIEST YOU will utilize secure File Transport Protocol (SFTP).

## **7. Payment Terms and Service Fees**

7.1 HEALTHIEST YOU shall invoice COMPANY a PEPM fee on the first (1st) day of each month for the Program services to be provided in that month. The invoice is based on a file that the COMPANY or its third party administrator sends on the 1st day of each month identifying the number of eligible employees participating in the Program. Invoices shall be electronically mailed to COMPANY at the address set forth in the Notice Section of this Agreement, Section 15.1. COMPANY agrees to remit full payment for services upon collecting premiums from Participants. COMPANY specifically acknowledges that it is responsible for

paying all applicable PEPM fees and the other fees (including Consultation Fees) identified herein to HEALTHIEST YOU.

7.2 If COMPANY fails to make any required payment within sixty (60) days of the date of HEALTHIEST YOU's invoice, HEALTHIEST YOU shall have the right to cancel the Program memberships associated with COMPANY.

7.3 COMPANY agrees to pay HEALTHIEST YOU the monthly fees specified in Exhibit A, which is attached hereto and incorporated herein by reference.

8. **Term.** The initial term of this Agreement shall be one (1) year, commencing upon the Effective Date ("Initial Term"). **The Agreement shall automatically renew for successive one (1) year terms (each, a "Renewal Term"), unless a Party provides written notice to the other Party of its intent to terminate the Agreement at least sixty (60) days prior to the end of the Initial Term or any Renewal Term. The Initial Term and the Renewal Terms are collectively referred to herein as the Agreement "Term". Services will begin on July 1, 2016.**

## 9. **Termination.**

9.1 This Agreement may terminate by expiration of its Term if either Party gives appropriate notice of such intent to terminate as set forth in Section 8 of this Agreement.

9.2 Either Party may terminate this Agreement if: (i) the other Party commits a material breach of this Agreement, and such breach is not cured within thirty (30) days following written notice thereof to the other Party; or (ii) the other Party files or is subject to any voluntary or involuntary bankruptcy, receivership, assignment for the benefit of creditors or similar proceeding.

9.3 HEALTHIEST YOU may terminate this Agreement immediately, if any conduct by COMPANY, which, in the sole judgment of HEALTHIEST YOU, poses a risk of harm to patients (i.e., COMPANY members or employees) or the quality of patient care provided by Providers, or poses a risk of harm to HEALTHIEST YOU's name or reputation.

9.4 Notwithstanding anything herein to the contrary, upon the effective date of the expiration or termination of this Agreement, HEALTHIEST YOU shall be paid all fees and charges which have been earned or incurred pursuant to this Agreement, through the effective date of such expiration or termination. COMPANY agrees to pay such fees within fifteen (15) days of the effective date of the expiration or termination of this Agreement.

9.5 Notwithstanding anything to the contrary that may be contained herein, in the event of the termination or expiration of this Agreement, the indemnification, non-solicitation, non-compete, confidentiality and other obligations of the Parties, or any other clauses herein, which by their terms or nature are to be performed or complied with subsequent to the expiration or termination of this Agreement shall survive and continue in full force and effect.

10. **Relationship of the Parties.** HEALTHIEST YOU and COMPANY are, and shall at all times function as, independent contractors under this Agreement. Neither HEALTHIEST YOU nor COMPANY is an employee, principal, agent, or partner of the other Party. Neither HEALTHIEST YOU nor COMPANY is authorized to assume or create any obligations or liabilities, express or implied, on behalf of or in the name of the other Party, except to the extent otherwise specifically contemplated herein. The employees, agents and representatives of a Party shall at all times be under the exclusive direction and control of that Party.

11. **Indemnification and Insurance.**

11.1 Each Party agrees that it is solely liable for any breach, negligence, misrepresentation, error, omission, or malfeasance by its employees, agents and representatives concerning the Program, or otherwise, made by such Party in fulfilling its obligations under this Agreement. Each Party agrees to indemnify and hold harmless the other Party, its directors, officers, affiliates, employees, agents, representatives, successors and assigns from and against any loss, cost, damage or expense, including reasonable attorneys' fees and court costs, arising out of any breach, negligence, misrepresentation, error, omission, or malfeasance of such breaching Party.

11.2 Each Party will maintain such insurance coverage as is reasonably necessary to support its respective indemnification obligations and in amounts consistent with the insurance coverage amounts maintained by similar entities. Upon written request, each Party shall provide evidence of such insurance coverage to the other Party. Additionally, HEALTHIEST YOU agrees that it will maintain appropriate liability insurance and contractually obligate the Provider and each licensed physician of the Provider to have medical malpractice insurance coverage.

12. **Ownership of Intellectual Property.**

12.1 COMPANY acknowledges that all materials relating to the Program that are developed by or on behalf of HEALTHIEST YOU (including, without limitation, the Program content referred to in Sections 4 and 5 above), or provided to COMPANY by HEALTHIEST YOU, and all trade names, service marks, trademarks and logos that are used by HEALTHIEST YOU (including, but not limited to, the "HEALTHIEST YOU" mark), and such other trade names, trademarks and logos as hereinafter may be designated by HEALTHIEST YOU in connection with its business (the "HEALTHIEST YOU Marks") are the unique intellectual property of HEALTHIEST YOU (the "Intellectual Property"), even if COMPANY or its employees or contractors may have contributed or joined in the development of the Intellectual Property, and shall remain the sole and exclusive property of HEALTHIEST YOU. HEALTHIEST YOU shall exclusively own and retain all right, title and interest in and to the Intellectual Property. COMPANY agrees that:

12.1.1 COMPANY will not duplicate the Program in any format that would, in whole or in part, reverse-engineer, infringe upon the intellectual property rights of HEALTHIEST YOU, and will not use or disclose the Intellectual Property in any manner other than pursuant to this Agreement.

12.1.2 COMPANY and its employees, directors, officers, agents, owners, successors and assigns shall maintain the confidentiality of any non-public Intellectual Property disclosed to COMPANY by HEALTHIEST YOU.

12.2 Upon termination of this Agreement, if reasonably feasible, COMPANY shall return to HEALTHIEST YOU all of the Intellectual Property provided to COMPANY and shall not disclose any non-public Intellectual Property of HEALTHIEST YOU, now or at any time in the future, unless required by applicable law.

### 13. Confidentiality.

13.1 For purposes of this Agreement, the Disclosing Party shall mean the Party that discloses any Confidential Information, as defined below, to the other Party to this Agreement, and the Receiving Party shall mean the Party that receives Confidential Information, as defined below, from the other Party to this Agreement.

13.2 For the purposes of this Agreement, “Confidential Information” shall include information: (i) that is not known by actual or potential competitors of the Disclosing Party or is generally unavailable to the public; (ii) that has been created, discovered or developed by, or otherwise become known to, the Disclosing Party or in which property rights have been assigned or otherwise conveyed to the Disclosing Party; and (iii) that has material economic value or potential material economic value to the Disclosing Party’s present or future business. “Confidential Information” shall include trade secrets which include all discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, data, research, technical data (whether or not patentable or register under patent, copyright or similar statutes and including all rights to obtain, register, perfect and enforce those proprietary interests) and any other Intellectual Property, customer and supplier lists, price lists, business plans, and any modifications or enhancements of any of the forgoing, and all program, marketing, sales, or other financial or business information disclosed to the Receiving Party by the Disclosing Party, either directly or indirectly, in writing or orally or by drawings or observation, which has actual or potential economic value to the Disclosing Party. “Confidential Information” shall also include, without limitation, analyses, forecasts, studies, summaries, marketing plans, financial data, business statistics, property, contracts, methods, transactions, affairs, concepts, ideas, services, products, images, graphics, text, audio, video, software and other data, knowledge, content or information in written, oral, visual and/or physical/sample form.

13.3 “Confidential Information” shall not include information that (a) is in or (through no improper action or inaction by the Receiving Party or any affiliate, agent or employee) enters the public domain (and is readily available without substantial effort); (b) was rightfully in its possession or known by it prior to receipt from the Disclosing Party; (c) was rightfully disclosed to it by another person without restriction; (d) was independently developed by it without access to such information and without use of any Confidential Information of the Disclosing Party; and (e) is required, pursuant to judicial action or governmental regulations or other requirements, to be disclosed; provided, however, that such party takes reasonable steps to notify the Disclosing Party to consent to the disclosure or seek a protective order or other appropriate remedy. In the

event that such protective order or other remedy is not obtained, Disclosing Party and its personnel shall furnish only that portion of the Confidential Information which is legally required and the other party shall exercise his or her best efforts to obtain reliable assurance that confidential treatment shall be accorded the Confidential Information.

13.4 The Receiving Party shall hold and maintain the Confidential Information of the Disclosing Party in strictest confidence and in trust for the sole and exclusive benefit of the Disclosing Party. The Receiving Party shall not, without the prior written approval of the Disclosing Party, use for its own benefit, publish or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Disclosing Party, any of the Confidential Information of the Disclosing Party.

13.5 Upon the written request of either party, the other party shall immediately return to the requesting party all of its Confidential Information (including all copies thereof) and shall destroy any copies, extracts, or other reproductions, in whole or in part, of any such Confidential Information, with such destruction confirmed to the other party in writing. Any oral Confidential Information or the substance of the information contained in any returned written Confidential Information shall continue to be subject to the terms of this Agreement. Each party agrees not to use, or assist or permit others to use, Confidential Information to attempt to circumvent or compete or otherwise interfere with the other party's present or future business opportunities. In the event that either party learns of an unauthorized disclosure of Confidential Information, whether intended or otherwise, or if either party is improperly contacted by or receives an improper proposal from any person requesting Confidential Information, each party shall immediately provide written notice fully setting forth the improper disclosure, contact or proposal to the other party.

13.6 The Receiving Party understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information of the Disclosing Party in violation of this Agreement may cause the Disclosing Party irreparable harm, and that monetary damages may not be a sufficient remedy. Thus, the Receiving Party agrees that the Disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any such disclosure or misappropriation and for such other relief as the Disclosing Party shall deem appropriate, and the Receiving party expressly agrees that the Disclosing Party shall be entitled, in addition to any other remedy provided by law, to seek an injunction or other equitable remedy respecting such violation or continued violation. Such right is to be in addition to the remedies otherwise available to the Disclosing Party at law or in equity. If any action at law or in equity is brought to enforce or interpret the provisions of this Section 13, the prevailing party shall be entitled to reasonable attorney's fees.

#### **14. Compliance.**

14.1 The Parties agree that the terms of this Agreement have been negotiated in an arms-length transaction between the Parties and have not been determined in a manner which takes into account the volume or value of any referrals or business that otherwise may be generated between the Parties or any entities affiliated with the Parties. The Parties further agree that this Agreement does not involve the counseling or promotion of a business arrangement that violates state or federal law. The Parties enter into this Agreement with the intent of conducting

their relationship and implementing the provisions hereof in full compliance with applicable federal, state and local law, including, without limitation, 42 U.S.C. § 1320a-7b(b) (the Medicare/Medicaid Anti-Kickback Statute) and 42 U.S.C. § 1395nn (the Federal Self-Referral Law), as the same may be amended (collectively, the “Fraud and Abuse” laws).

14.2 The Parties acknowledge that, as a result of this Agreement and Services to be provided through the Program, each Party will have access to, and/or obtain protected health information (“PHI”) in written and/or electronic format, including, but not limited to, medical records of patients (i.e., COMPANY members and employees and their Eligible Dependents). During the term of this Agreement, except as otherwise required by state and/or federal law, each Party agrees to: (1) maintain all PHI in a secure and confidential fashion; (2) ensure that its directors, officers, employees and agents will maintain all PHI in a secure and confidential fashion; and (3) not disclose such information to any third party, except as set forth herein or as permitted by applicable law. Before any release or disclosure of medical records occurs, any required authorization to release shall be obtained from the patient or his/her legal representative, in accordance with applicable state and federal laws pertaining to the confidentiality of medical records, unless otherwise such disclosure is permitted by applicable law. Any and all disclosure of PHI shall be made in accordance with all applicable state and federal law, including the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and any and all implemented regulations.

**15. Notices.**

15.1 All notices hereunder by either Party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight delivery (for which evidence of receipt is required), addressed to the representatives of HEALTHIEST YOU and COMPANY as stated below. Notice shall be deemed to have been duly given as follows: (a.) upon personal delivery; (b.) three (3) days after deposit when deposited in the United States Mail, postage prepaid; (c.) seven (7) days after deposit when given by certified mail, return receipt requested; and, (d.) one (1) day after deposit when deposited with an overnight delivery service.

The address of each Party for notice is:

If to HEALTHIEST YOU:

HY Holdings, Inc.  
5350 E High Street, Suite 350  
Phoenix, AZ 85054  
Attn: Jim Prendergast

With copy to:  
HY Holdings, Inc.  
5350 E High Street, Suite 350  
Phoenix, AZ 85054  
Attn: Andrea Duff

If to COMPANY:

Attn:  
Electronic Communications:  
andrea@healthiestyou.com

15.2 In the event that representatives change due to a change in personnel after execution of this Agreement, notice of the name of the new representatives shall be furnished in writing to the other Party and a copy of said notification will be attached to the original(s) of this Agreement.

**16. Miscellaneous.**

16.1 No license is granted, conveyed or implied with respect to the Program and Confidential Information. HEALTHIEST YOU makes no warranties or representations (express, implied, statutory or otherwise), of any kind with respect to the Program, Services and/or Confidential Information and expressly disclaims all implied warranties. Neither HEALTHIEST YOU nor any of its affiliates or their respective employees, agents or representatives shall be liable to COMPANY or any third party resulting from the use of the Program, Services, and/or Confidential Information by COMPANY or any third party.

16.2 If any one or more of the provisions of this Agreement or portion thereof, or the application thereof to any person or circumstances, shall be held or declared to be invalid, illegal, void, or unenforceable, such provision shall be severed and the remainder of this Agreement (or of such provision) shall not be affected and shall remain in full force and effect. Furthermore, the severed provision shall be interpreted in a manner that accomplishes, to the extent possible, the original purpose of such provision.

16.3 This Agreement shall remain in full force and effect in accordance with, the laws of the State of Arizona, exclusive of conflict of law rules. Each Party to this Agreement hereby agrees and consents that any legal action or proceeding with respect to this Agreement shall only be brought in the courts of the State of Arizona, Maricopa County.

16.4 This Agreement may be executed in counterparts, each of which will constitute an original and all of which will be one and the same document. The Agreement shall be fully executed when each party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the parties to this Agreement. Signed counterparts may be exchanged by facsimile or by electronic delivery.

16.5 Each signatory hereto represents that he/she has full authority to sign this Agreement on behalf of his/her respective organization and to bind and obligate such organization to the terms hereof.

16.6 Other than as stated in this Agreement, neither Party shall use the name, logo, or likeness of the other Party, in any electronic medium, signage, advertising, or promotional material, without the prior written consent of the other Party. Such consent may be granted or withheld in the sole discretion of the Party whose consent is required; however, such consent shall not be unreasonably withheld.

16.7 Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term,

covenant or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their permitted successors and assigns.

16.8 HEALTHIEST YOU may assign this Agreement without COMPANY's prior consent to a successor in interest to all or substantially all of the assets and business of HEALTHIEST YOU. COMPANY may not assign or delegate any of its obligations under this Agreement without the prior written consent of HEALTHIEST YOU, which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding upon and inure to the benefit of the parties and respective successors and assigns.

16.9 This Agreement (including exhibits) constitutes the entire agreement by and between HEALTHIEST YOU and COMPANY relating in any manner to the subject matter herein, and any representation, warranty, covenant, understanding or agreement not contained or incorporated in it by reference shall be of no force or effect. This Agreement supersedes all prior proposals, discussions, writings, and agreements between the Parties relating to the subject matter hereof. This Agreement may only be modified in writing signed by an authorized representative of each Party.

16.10 If any legal action is brought for the enforcement of any provision of this Agreement, the prevailing party shall be entitled to recover upon final judgment on the merits, reasonable attorneys' fees (including reasonable attorneys' fees for any appeal) incurred in bringing such action.

**IN WITNESS WHEREOF**, this Agreement has been duly executed and delivered by the duly authorized representatives of the Parties herein as of the Effective Date

**HY HOLDINGS, INC.**

By: \_\_\_\_\_  
Jim Prendergast  
CEO

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

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

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

## **Exhibit A**

COMPANY agrees to pay the following fees to HEALTHIEST YOU for Participants (including their Eligible Dependents) and who are eligible to receive services through the Program:

**Fees.** COMPANY shall pay a Per Employee Per Month (PEPM) fee.

### **Plan Pricing Schedule:**

\$8.00 PEPM

### **Utilization Review/Rate Guarantee**

Rates are guaranteed for 1 year. Prior to annual renewal, utilization will be reviewed to determine pricing for following year.

If Company exceeds 40% utilization (calculated by number of consults divided by number of members), entire block of utilization subject to review.

**Fulfillment Fee.** HEALTHIEST YOU shall distribute a standardized “Welcome Kit” to each Participant enrolled in the Program, which shall include the Participant’s membership card and other program content at no additional cost.

## Exhibit B

### Service Level Standards

HEALTHIEST YOU will use commercially reasonable efforts to administer solely the telephone Cross-Coverage Consultations under the Program according to the following performance standards:

**Hours of Operation:** Incoming telephone calls will be handled by HEALTHIEST YOU 24 hours per day, 7 days per week, and 365 days per year.

**Language Capabilities:** Requests will be handled by HEALTHIEST YOU in English and Spanish.

**System Standards:** Computer systems will be up and running at full capacity no less than ninety-nine percent (99%) of the time excluding scheduled maintenance time.

**Call Answering:** HEALTHIEST YOU will answer telephone calls coming into the toll-free number as follows:

- After passing through an interactive voice response (IVR), the caller will hold in queue, and
- 85% of all telephone calls are to be answered live within 30 seconds on a monthly basis.

**Customer Complaints:** The number of legitimate service complaints handled by HEALTHIEST YOU related to how a request was handled by HEALTHIEST YOU in any month should be less than 0.50% of the entire member database. HEALTHIEST YOU shall respond to such complaints immediately and shall use best efforts to resolve such complaints within 48 business hours.