

**REGIONAL BEHAVIORAL HEALTH AUTHORITY (RBHA)
SERVICES AND SUPPORTS PROVIDER AGREEMENT**

The term of this Services and Supports Agreement (the "Agreement") by and between Mercy Maricopa Integrated Care dba Mercy Maricopa Integrated Care and Mercy Maricopa Advantage, on behalf of itself and its Affiliates (hereinafter "Company"), and **City of Tempe** (hereinafter "Provider"), shall commence effective **April 1, 2014** (the "Effective Date"). Company and Provider may be referred to individually as a "Party" and collectively as the "Parties." The Regulatory Compliance Addendum attached to this Agreement as Exhibit A, is expressly incorporated into this Agreement and is binding upon the Parties. In the event of any inconsistent or contrary language between the Regulatory Compliance Addendum and any other part of this Agreement, including but not limited to exhibits, attachments or amendments, the Parties agree that the provisions of the Regulatory Compliance Addendum shall prevail. The Provider Scope of Work statement(s) that are attached to this Agreement as Exhibit B, are also expressly incorporated into this Agreement.

WHEREAS, Company administers Plans for Government Sponsors that provide access to health care services to Members or arranges for the provision of health care services to Members of Government Programs; and

WHEREAS, Company contracts with certain providers and facilities to provide access to such services to Members; and

WHEREAS, Company and Provider mutually desire to enter into an arrangement whereby Provider will become a Participating Provider; and

WHEREAS, in return for the provision of services by Provider, Company will pay Provider for Covered Services under the terms of this Agreement; and

WHEREAS, Provider understands and agrees that Government Sponsors or other government entities may require certain changes to the terms of this Agreement before Provider can provide services to Members under the terms of any Plans that are awarded, by the Government Sponsors, to Company.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, promises and undertakings herein, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1.0 DEFINITIONS

When used in this Agreement, all capitalized terms shall have the following meanings:

Affiliate. Any corporation, partnership or other legal entity (including any Plan) directly or indirectly owned or controlled by, or which owns or controls, or which is under common ownership or control with Company.

Confidential Information. Any information that identifies a Member and is related to the Member's participation in a Plan, the Member's physical or mental health or condition, the provision of health care to the Member or payment for the provision of health care to the Member. Confidential Information includes, without limitation, "individually identifiable health information," as defined in 45 C.F.R. § 160.103.

Covered Services. Those services for which a Member is entitled to receive coverage under the terms and conditions of a Plan. The Parties agree that Company is obligated to pay for only those Covered Services that are determined to be medically necessary, as determined in accordance with the Member's applicable Plan.

Effective Date. Defined in first paragraph of this Agreement.

Government Programs. Plans operated and/or administered by Company pursuant to a State Contract.

Government Sponsor. A state agency or other governmental entity authorized to offer, issue and/or administer one or more Plans, and which, to the extent applicable, has contracted with Company to administer all or a portion of such Plan(s).

Material Change. Any change in Policies that could reasonably be expected, in Company's determination, to have a material adverse impact on (i) Provider's reimbursement for Provider Services or (ii) Provider administration.

Member. An individual covered by or enrolled in a Plan.

Party. Company or Provider, as applicable. Company and Provider may be referred to collectively as the "Parties."

Plan. A Member's health care benefits as set forth in the State Contract. Such Plans are listed in the **Program Participation Schedule** attached hereto and made a part hereof.

Policies. The policies and procedures promulgated by Company which relate to the duties and obligations of the Parties under the terms of this Agreement, including, but not limited to: (a) quality improvement/management; (b) utilization management, including, but not limited to, precertification of elective admissions and procedures, concurrent review of services and referral processes or protocols; (c) pre-admission testing guidelines; (d) claims payment review; (e) member grievances; (f) provider credentialing; (g) electronic submission of claims and other data required by Company; and (h) any applicable participation criteria required by the State in connection with the Government Programs. Policies also include those policies and procedures set forth in the Company's and/or Government Sponsor's manuals (as modified from time to time) as Company determines appropriate in its sole discretion; clinical policy bulletins made available via Company's internet web site; and other policies and procedures, whether made available via a password-protected web site for Participating Providers (when available), by letter, newsletter, electronic mail or other media.

Proprietary Information. Any and all information, whether prepared by a Party, its advisors or otherwise, relating to such Party or the development, execution or performance of this Agreement whether furnished prior to or after the Effective Date. Proprietary Information includes but is not limited to, with respect to Company, the development of a pricing structure, (whether written or oral) all financial information, rate schedules and financial terms which relate to Provider and which are furnished or disclosed to Provider by Company. Notwithstanding the foregoing, the following shall not constitute Proprietary Information:

- (a) information which was known to a receiving Party (a "Recipient") prior to receipt from the other Party (a "Disclosing Party") (as evidenced by the written records of a Recipient);
- (b) information which was previously available to the public prior to a Recipient's receipt thereof from a Disclosing Party;
- (c) information which subsequently became available to the public through no fault or omission on the part of a Recipient, including without limitation, the Recipient's officers, directors, trustees, employees, agents, contractors and other representatives;
- (d) information which is furnished to a Recipient by a third party which a Recipient confirms, after due inquiry, has no confidentiality obligation, directly or indirectly, to a Disclosing Party; or
- (e) information which is approved in writing in advance for disclosure or other use by a Disclosing Party.

Provider. Defined in first paragraph of this Agreement.

Provider Services. Defined in Section 2.1 of this Agreement

State Contract. Company's contract(s) with Government Sponsors to administer Plans or Government Programs identified in the **Program Participation Schedule**.

2.0 PROVIDER SERVICES AND OBLIGATIONS

2.1 Provision of Services.

Provider will make available to Members those Covered Services described herein in Exhibit B (“Provider Services”). Company and Provider may mutually agree in writing at any time, and from time to time, either to increase or decrease the Provider Services made available to Members under this Agreement.

2.2 Non-Discrimination and Equitable Treatment of Members

Provider agrees to provide Provider Services to Members with the same degree of care and skill as customarily provided to Provider’s customers who are not Members, according to generally accepted standards of Provider’s profession or industry. Provider and Company agree that Members and non-Members should be treated equitably; to that end Provider agrees not to discriminate against Members on the basis of race, gender, creed, ancestry, lawful occupation, age, religion, marital status, sexual orientation, mental or physical disability, color, national origin, place of residence, health status, source of payment for services, cost or extent of Provider Services required, or any other grounds prohibited by law or this Agreement.

2.3 Federal Law.

Company is a Federal contractor and an Equal Opportunity Employer which maintains an Affirmative Action Program. To the extent applicable to Provider, Provider, on behalf of itself and any subcontractors, agrees to comply with the following, as amended from time to time: Title XIX of the federal Social Security Act, 42 U.S.C. 1396 et seq., and regulations promulgated thereunder, Executive Order 11246, the Vietnam Era Veterans Readjustment Act of 1974, the Drug Free Workplace Act of 1988, Section 503 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 (regarding education programs and activities), the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) administrative simplification rules at 45 CFR parts 160, 162, and 164, the Americans with Disabilities Act of 1990, Federal laws, rules and regulations designed to prevent or ameliorate fraud, waste, and abuse, including, but not limited to, applicable provisions of Federal criminal law, the False Claims Act (31 U.S.C. 3729 et. seq.), and the anti-kickback statute (Section 1128B(b) of the Social Security Act), and any similar laws, regulations or other legal mandates applicable to recipients of federal funds and/or transactions under or otherwise subject to any government contract of Company.

2.4 Provider Representations.

2.4.1 General Representations. Provider represents, warrants and covenants, *as applicable*, that: (a) it has and shall maintain throughout the term of this Agreement all appropriate license(s) and certification(s) mandated by governmental regulatory agencies; (b) it is, and will remain throughout the term of this Agreement, in compliance with all applicable Federal and state laws and regulations related to this Agreement and the services to be provided hereunder, including, without limitation, statutes and regulations related to fraud, abuse, discrimination, disabilities, confidentiality, false claims and prohibition of kickbacks; (c) it is permitted to act as a subcontractor in the Medicaid and/or Medicare programs; (d) this Agreement has been executed by its duly authorized representative; and (e) executing this Agreement and performing its obligations hereunder shall not cause Provider to violate any term or covenant of any other agreement or arrangement now existing or hereinafter executed.

2.4.2 Government Program Representations. Company has or shall seek contracts to serve beneficiaries of Government Programs. To the extent Company participates in such Government Programs, Provider agrees, on behalf of itself and any subcontractors of Provider acting on behalf of Provider, to be bound by all rules and regulations of, and all requirements applicable to, such Government Programs. Provider acknowledges and agrees that all provisions of this Agreement shall apply equally to any employees, independent contractors and subcontractors of Provider who provide or may provide Covered Services to Members of Government Programs, and Provider represents and warrants that Provider shall cause such employees, independent contractors and subcontractors to comply with this Agreement, State Contract, and all applicable laws, rules and regulations and perform all requirements applicable to Government Programs. Any such subcontract or delegation shall be subject to prior written approval by Company. With respect to Members of Government Programs, Provider acknowledges that compensation under this Agreement for such Members constitutes receipt of Federal funds. Provider

agrees that all services and other activities performed by Provider under this Agreement will be consistent and comply with the obligations of Company and/or Government Sponsor under its contract(s) with the Centers for Medicare and Medicaid Services (“CMS”), and any applicable state regulatory agency, to offer Government Programs. Provider further agrees to allow Government Sponsor, CMS, any applicable state regulatory agency, and Company to monitor Providers’ performance under this Agreement on an ongoing basis in accordance with applicable laws, rules and regulations. Provider acknowledges and agrees that Company may only delegate its activities and responsibilities under the State Contract or any Company contract(s) with Government Sponsor, CMS and any applicable regulatory agency, to offer Government Programs in a manner consistent with applicable laws, rules and regulations, and that if any such activity or responsibility is delegated by Company to Provider, the activity or responsibility may be revoked if Government Sponsor, CMS or Company determine that Provider has not performed satisfactorily.

2.4.3 Government Program Requirements. Provider hereby agrees to perform its obligations under this Agreement in accordance with the terms and conditions set forth in Exhibit A.

2.4.4 Qualified Employees and Subcontractors. Provider shall exclude any employee or subcontractor from performing services in connection with this agreement if such provider has been suspended or terminated from participation in Government Programs or any other government-sponsored program, including Medicare or the Medicaid program in any state.

2.4.5 Suspension or Debarment. Provider represents, warrants and covenants, as applicable, that it and its employees or subcontractors, as applicable:

- a. Has not within a three year period preceding the proposal submission been convicted or had a civil judgment rendered against him/her/it for commission of fraud or criminal offense in performing a public transaction or contract (local, state or federal) or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
- b. Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity with the commission of any of the above offenses; and
- c. Has not within a five year period preceding execution of this Agreement had one or more public transactions terminated for cause or fault; and
- d. Is not excluded, debarred or suspended from participation in any government-sponsored program including, but not limited to, Government Programs, Medicare or the Medicaid program in any state; and
- e. Will immediately report any change in the above status to Company; and
- f. Will maintain all appropriate licenses to perform its duties and obligations under the Agreement.

2.5 Provider's Insurance.

During the term of this Agreement, Provider agrees to procure and maintain such policies of general and professional liability and other insurance, or a comparable program of self-insurance, at minimum levels as required by state law or, in the absence of a state law specifying a minimum limit, an amount customarily maintained by Provider in the state or region in which the Provider operates. Such insurance coverage shall cover the acts and omissions of Provider as well as those Provider’s agents and employees. Provider agrees to deliver certificates of insurance or other documentation as appropriate to show evidence of such coverage to Company upon request. Provider agrees to make best efforts to provide to Company at least thirty (30) days advance notice, and in any event will provide notice as soon as reasonably practicable, of any cancellation or material modification of said policies.

2.6 Program Participation.

Provider agrees to participate in the Plans and other health benefit programs listed on the **Program Participation Schedule**.

3.0 **COMPANY OBLIGATIONS**

3.1 Company's Covenants.

Company or Government Sponsors shall provide Members with a means to identify themselves to Provider (e.g., identification cards), explanation of provider payments, a general description of products (e.g. Quick Reference Card), a listing of Participating Providers, and timely notification of material changes in this information. Company shall provide Provider with a means to check eligibility. Company shall include Provider in the Participating Provider directory or directories for the Plans, Specialty Programs and products in which Provider is a Participating Provider, including when Provider is designated as preferred participant, and shall make said directories available to Members. Company reserves the right to determine the content of provider directories.

3.2 Company Representations.

Company represents and warrants that: (a) this Agreement has been executed by its duly authorized representative; and (b) executing this Agreement and performing its obligations hereunder shall not cause Company to violate any term or covenant of any other agreement or arrangement now existing or hereinafter executed.

The parties acknowledge that one or more state governmental authorities may recommend or require that various Company agreements, including this Agreement, be executed prior to the issuance to Company of one or more approvals, consents, licenses, permissions or other authorizations from governmental authorities with jurisdiction over the subject matter of this Agreement, or which Company deems to be necessary or desirable in its sole discretion (collectively, a "License"). Provider agrees that all Company obligations to perform, and all rights of Provider, under this Agreement are expressly conditioned upon the receipt of all Licenses. Failure of Company to obtain any License shall impose no liability on Company under this Agreement.

3.3 Company's Insurance.

Company at its sole cost and expense agrees to procure and maintain such policies of general and/or professional liability and other insurance (or maintain a self-insurance program) as shall be necessary to insure Company and its employees against any claim or claims for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of any service by Company under this Agreement and the administration of Plans.

4.0 **CLAIMS SUBMISSIONS, COMPENSATION AND MEMBER BILLING**

4.1 Compensation.

Company shall provide Compensation to Provider for Covered Services provided to Members in accordance with the terms of the **Services and Compensation Schedule**, which is attached hereto and made a part of this Agreement hereof.

Company and Provider may agree to alternative billing arrangements, such as the submission of invoices, which shall be specified in the attached **Services and Compensation Schedule**, and supplant the terms of sections 4.1.1 and 4.1.2, to the extent inconsistent therewith.

4.1.1 Provider Obligation to Submit Claims or Invoices. Provider agrees to submit invoices to Company for Provider Services rendered to Members. Provider agrees to submit invoices related to a Member enrolled in a Government Program in the form and manner as specified by Company, and, Provider certifies that any such data is accurate, complete and truthful. Provider agrees that Company, or the applicable Government Sponsor, will not be obligated to make payments for billings received more than one hundred eighty (180) days (or such other period required by applicable state law or

regulation) from (a) the date of service or, (b) when Company is the secondary payer, from the date of receipt of the primary payer's explanation of benefits. Company may waive this requirement if Provider provides notice to Company, along with appropriate evidence, of other extraordinary circumstances outside the control of Provider that resulted in the delayed submission. In addition, unless Provider notifies Company of its payment disputes within one hundred eighty (180) days or such other time as required by applicable state law or regulation, of receipt of payment from Company, such payment will be considered full and final payment for the related invoices.

4.1.2 Company Obligation to Pay for Covered Services. Company shall make payments to Provider for Covered Services on a timely basis consistent with the claims payment procedure described at 42 U.S.C. § 1396a(a)(37)(A). Company agrees to pay Provider for Covered Services rendered to Members according to the rates set forth in the **Services and Compensation Schedule**, attached hereto and made a part hereof.

4.1.3 Eligibility Determinations. Company shall have the right to recover payments made to Provider if the payments are for services provided to an individual who is later determined to have been ineligible based upon information that is not available to Company at the time the service is rendered or authorization is provided. Company reserves the right to recoup any overpayment or payment made in error (e.g., a duplicate payment or payment for services rendered by Provider to a patient who was not a Member and amounts identified through routine investigative reviews of records or audits) against any other monies due to Provider under this Agreement. Moreover, Provider will return any overpayments to the extent required by Section 6402(a) of the Patient Protection and Affordable Care Act.

4.1.4 Authorization of Services. Company is responsible to make payment only for services authorized in advance or included in a Member's plan of care, and only to the extent authorized.

4.2 Coordination of Benefits.

Except as otherwise required under applicable Federal, state law or regulation or a Plan, when Company or a Government Sponsor is secondary payer under applicable coordination of benefit principles, and payment from the primary payer is less than the compensation payable under this Agreement without coordination of benefits, then Company or Government Sponsor will pay Provider the lesser of (i) the copayment, coinsurance and deductible amount for the Covered Services as reported on the explanation of benefits of the primary payer, or (ii) the amount of the difference between the amount paid by the primary payer and the compensation payable under this Agreement, absent other sources of payment. Notwithstanding any other provision of this paragraph, if payment from the primary payer is greater than or equal to the compensation payable under this Agreement without coordination of benefits, neither Company, Government Sponsor nor the applicable Member (in accordance with Section 4.3.2 below) shall have any obligation to Provider. Notwithstanding anything to the contrary in this section, in no event shall Provider collect more than Medicare allows if Medicare is the primary payer. Medicaid is never the primary payer.

4.3 Member Billing.

4.3.1 Permitted Billing of Members. Provider may bill or charge Members only in the following circumstances: (a) applicable member financial responsibility; and (b) for services that are not Covered Services only if: (i) the Member's Plan provides and/or Company confirms that the specific services are not covered; (ii) the Member was advised in writing prior to the services being rendered that the specific services may not be Covered Services; and (iii) the Member agreed in writing to pay for such services after being so advised. Provider acknowledges that Company's denial or adjustment of payment to Provider based on Company's performance of utilization management as described in Section 4.1.3 or otherwise is not a denial of Covered Services under this Agreement or under the terms of a Plan, except if Company confirms otherwise under this Section 4.3. Provider may bill or charge individuals who were not Members at the time that services were rendered.

4.3.2 Holding Members Harmless. Provider hereby agrees that in no event, including, but not limited to the failure, denial or reduction of payment by Company, insolvency of Company or breach of this

Agreement, shall Provider bill, charge, collect a deposit from, seek remuneration or reimbursement from, or have any recourse (i) against Members or persons acting on their behalf (other than Company) or (ii) any settlement fund or other *res* controlled by or on behalf of, or for the benefit of, a Member for Covered Services. Provider further agrees that this Section 4.3.2: (a) shall survive the expiration or termination of this Agreement regardless of the cause giving rise to termination and shall be construed for the benefit of Members; and (b) supersedes any oral or written contrary agreement or waiver now existing or hereafter entered into between Provider and Members or persons acting on their behalf.

To protect Members, Provider agrees not to seek or accept or rely upon waivers of the Member protections provided by this Section 4.3.

5.0 COMPLIANCE WITH POLICIES

5.1 Policies.

Provider agrees to accept and comply with Policies. As applicable, Provider will utilize the electronic real time HIPAA compliant transactions. Company may at any time modify Policies. Company will provide written notice of Material Changes. Failure by Provider to object in writing to any Material Change within thirty (30) days following receipt thereof constitutes Provider's acceptance of such Material Change. In the event that Provider reasonably believes that a Material Change is likely to have a material adverse financial impact, Provider agrees to notify Company in writing, specifying the specific bases demonstrating a likely material adverse financial impact, and the Parties will negotiate in good faith an appropriate amendment, if any, to this Agreement. Notwithstanding the foregoing, at Company's discretion, Company may modify the Policies to comply with applicable law or regulation, or any order or directive of any governmental agency, without the consent of Provider, and the Policies shall be deemed to be automatically amended to conform with all laws and regulations promulgated at any time by any state or federal regulatory agency or authority having supervisory authority over this Agreement. Provider agrees that noncompliance with any requirements of this Section 5.1 or any Policies will relieve Company or Government Sponsors and Members from any financial liability for the applicable portion of the Provider Services.

5.2 Notices and Reporting.

To the extent neither prohibited by law nor violative of applicable privilege, Provider agrees to provide notice to Company, and shall provide all information reasonably requested by Company regarding the nature, circumstances, and disposition, of: (a) any litigation or administrative action brought against Provider or any of its employees or subcontractors which is related to the provision services and could have a material impact on the Provider Services provided to Members; (b) any investigation initiated by a government agency or program against or involving Provider or any of its employees or subcontractors; (c) any change in the ownership or management of Provider; and (d) any material change in services provided by Provider or licensure status related to such services. Provider agrees to use best efforts to provide Company with prior notice of, and in any event will provide notice as soon as reasonably practicable notice of, any actions taken by Provider described in this Section 5.2.

5.3 Information and Records.

5.3.1 Maintenance of Information and Records. Provider agrees (a) to maintain Information and Records (as such terms are defined in Section 5.3.2) in a current, detailed, organized and comprehensive manner and in accordance with Government Sponsor directives, applicable Federal and state laws, and accreditation standards; (b) that all Member Confidential Information shall be treated as confidential and in accordance with applicable laws; (c) to maintain such Information and Records for the longer of six (6) years after the last date Provider Services were provided to Member, or the period required by applicable law or Government Sponsor directives; and (d) to maintain Information and Records in accordance with the requirements of Exhibit A. This Section 5.3.1 shall survive the termination of this Agreement, regardless of the cause of the termination.

5.3.2 Access to Information and Records. Provider agrees that (a) Company (including Company's authorized designee) and Government Sponsors shall have access to all data and information obtained, created or collected by Provider related to Members and necessary for payment of claims, including

without limitation Confidential Information (“Information”); (b) Company (including Company’s authorized designee), Government Sponsors and Federal, state, and local governmental authorities and their agents having jurisdiction, upon request, shall have access to all books, records and other papers (including, but not limited to, contracts and financial records) and information relating to this Agreement and to those services rendered by Provider to Members (“Records”); (c) Company or its agents or designees shall have access to records for the purpose of audits, assessing quality and performing utilization management functions; (d) applicable Federal and state authorities and their agents shall have access to records for assessing the quality of services or investigating Member grievances or complaints. Provider agrees to supply copies of Information and Records within fourteen (14) days of the receipt of a request, where practicable, and in no event later than the date required by Government Sponsor directives and any applicable law or regulatory authority. This Section 5.3.2 shall survive the termination of this Agreement, regardless of the cause of termination.

5.4 Proprietary Information.

Each Party agrees that the Proprietary Information of the other Party is the exclusive property of such Party and that each Party has no right, title or interest in the same. Each Party agrees to keep the Proprietary Information and this Agreement strictly confidential and agrees not to disclose any Proprietary Information or the contents of this Agreement to any third party without the other Party’s consent, except (i) to governmental authorities having jurisdiction, (ii) in the case of Company’s disclosure, to Members, Government Sponsors, consultants and vendors under contract with Company. Except as otherwise required under applicable Federal or state law, each Party agrees to not use any Proprietary Information of the other Party, and at the request of the other Party hereto, return any Proprietary Information upon termination of this Agreement for whatever reason.

6.0 **TERM AND TERMINATION**

6.1 Term.

This Agreement shall be effective for an initial term (“Initial Term”) of one (1) year from the Effective Date, and thereafter shall automatically renew for additional terms of one (1) year each, unless and until terminated in accordance with this Article 6.0.

6.2 Termination without Cause.

This Agreement may be terminated by either Party at any time without cause with at least ninety (90) days prior written notice to the other Party.

6.3 Termination for Breach.

This Agreement may be terminated at any time by either Party upon at least thirty (30) days prior written notice of such termination to the other Party upon material default or substantial breach by such Party of one or more of its obligations hereunder, unless such material default or substantial breach is cured within thirty (30) days of the notice of termination; provided, however, if such material default or substantial breach is incapable of being cured within such thirty (30) day period, any termination pursuant to this Section 6.3 will be ineffective for the period reasonably necessary to cure such breach if the breaching party has taken all steps reasonably capable of being performed within such thirty (30) day period. Notwithstanding the foregoing, the effective date of such termination may be extended pursuant to Section 6.6 herein.

6.4 Immediate Termination or Suspension.

Any of the following events shall result in the immediate termination or suspension of this Agreement by Company, upon notice to Provider, at Company’s discretion at any time: (a) the withdrawal, expiration or non-renewal of any Federal, state or local license, certificate, approval or authorization of Provider; (b) the bankruptcy or receivership of Provider, or an assignment by Provider for the benefit of creditors; (c) the loss or material limitation of Provider's insurance under Section 2.4 of this Agreement; (d) a determination by Company that Provider's continued participation in provider networks could result in harm to Members; (e) the exclusion, debarment or suspension of Provider from participation in any governmental sponsored program, including, but not limited to, Government Programs, Medicare or the Medicaid program in any state; (f) the indictment or conviction of Provider for any crime; (h) change of control of Provider to an entity

not acceptable to Company; or (h) the withdrawal, expiration or termination of the State Contract. To protect the interests of Members, Provider will provide immediate notice to Company of any of the aforesaid events, including notification of impending bankruptcy.

6.5 Obligations Following Termination.

Following the effective date of any expiration or termination of this Agreement or any Plan, Provider and Company will cooperate as provided in this Section 6.5 and in Exhibit A. This Section 6.5 and Exhibit A shall survive the termination of this Agreement, regardless of the cause of termination.

6.5.1 Upon Termination. Upon expiration or termination of this Agreement for any reason, other than termination by Company in accordance with Section 6.4 above, Provider agrees to provide Provider Services at Company's discretion to any Member who is receiving services from Provider as of the effective date of termination until the appropriate transition of the Member to another provider, but in no event longer than 180 days. The terms of this Agreement, including the **Services and Compensation Schedule** shall apply to all services under this Agreement 6.5.1.

6.5.2 Upon Insolvency or Cessation of Operations. If this Agreement terminates as a result of insolvency or cessation of operations of Company, and as to Members of HMOs that become insolvent or cease operations, then in addition to other obligations set forth in this section, Provider shall continue to provide Provider Services to: (a) all Members for the period for which premium has been paid This provision shall be construed to be for the benefit of Members. No modification of this provision shall be effective without the prior written approval of the applicable regulatory agencies.

6.5.3 Obligation to Cooperate. Upon notice of expiration or termination of this Agreement or of a Plan, Provider shall cooperate with Company and comply with Policies, if any, in the transfer of Members to other providers.

7.0 **RELATIONSHIP OF THE PARTIES**

7.1 Independent Contractor Status.

The relationship between Company and Provider, as well as their respective employees and agents, is that of independent contractors, and neither shall be considered an agent or representative of the other Party for any purpose, nor shall either hold itself out to be an agent or representative of the other for any purpose. Company and Provider will each be solely liable for its own activities and those of its agents and employees, and neither Company nor Provider will be liable in any way for the activities of the other Party or the other Party's agents or employees arising out of or in connection with: (a) any failure to perform any of the agreements, terms, covenants or conditions of this Agreement; (b) any negligent act or omission or other misconduct; (c) the failure to comply with any applicable laws, rules or regulations; or (d) any accident, injury or damage. Provider agrees to indemnify and hold harmless the Government Sponsor and Company from any and all claims, liabilities and third party causes of action arising out of the Provider's provision of Provider Services to Members. Company agrees to indemnify and hold harmless the Provider from any and all claims, liabilities and third party causes of action arising out of the Company's administration of health care services in connection with the Plans. This provision shall survive the expiration or termination of this Agreement, regardless of the reason for termination.

7.2 Use of Name.

Provider consents to the use of Provider's name and other identifying and descriptive material in provider directories and in other materials and marketing literature of Company in all formats, including, but not limited to, electronic media. Provider may use Company's names, logos, trademarks or service marks in marketing materials or otherwise, upon receipt of Company's prior written consent, which shall not be unreasonably withheld.

7.3 Interference with Contractual Relations.

Provider shall not engage in activities that will cause Company to lose existing or potential Members, including but not limited to: (a) advising Company customers, Government Sponsors or other entities currently under contract with Company to cancel, or not renew said contracts; (b) impeding or otherwise

interfering with negotiations which Company is conducting for the provision of health benefits or Plans; or (c) using or disclosing to any third party membership lists acquired during the term of this Agreement for the purpose of soliciting individuals who were or are Members or otherwise to compete with Company. This section shall continue to be in effect for a period of one (1) year after the expiration or termination of this Agreement.

8.0 DISPUTE RESOLUTION

8.1 Member Grievance Dispute Resolution.

Provider agrees to (a) cooperate with and participate in Company's applicable appeal, grievance and external review procedures (including, but not limited to, Medicaid appeals and expedited appeals procedures), (b) provide Company with the information necessary to resolve same, and (c) abide by decisions of the applicable appeals, grievance and review committees. Company will make available to Provider information concerning the Member appeal, grievance and external review procedures at the time of entering into this Agreement.

8.2 Provider Dispute Resolution.

Company shall provide a mechanism whereby Provider may raise issues, concerns, controversies or claims regarding the obligations of the Parties under this Agreement. Provider shall exhaust this mechanism prior to instituting any arbitration or other permitted legal proceeding. The Parties agree that any dispute that may arise between the Parties shall not disrupt or interfere with the provision of services to Members. Discussions and negotiations held pursuant to this Section 8.2 shall be treated as inadmissible compromise and settlement negotiations for purposes of applicable rules of evidence.

8.3 Arbitration.

8.3.1 Submission of Claim or Controversy to Arbitration. Any controversy or claim arising out of or relating to this Agreement or the breach, termination, or validity thereof, except for temporary, preliminary, or permanent injunctive relief or any other form of equitable relief, shall be settled by binding arbitration administered by the American Arbitration Association ("AAA") and conducted by a sole Arbitrator ("Arbitrator") in accordance with the AAA's Commercial Arbitration Rules ("Rules"). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, to the exclusion of state laws inconsistent therewith or that would produce a different result, and judgment on the award rendered by the Arbitrator (the "Award") may be entered by any court having jurisdiction thereof. A stenographic record shall be made of all testimony in any arbitration in which any disclosed claim or counterclaim exceeds \$250,000. An Award for \$250,000 or more shall be accompanied by a short statement of the reasoning on which the Award rests.

8.3.2 Appeal of Arbitration Award. In the event a Party believes there is a clear error of law and within thirty (30) days of receipt of an Award of \$250,000 or more (which shall not be binding if an appeal is taken), a Party may notify the AAA of its intention to appeal the Award to a second Arbitrator (the "Appeal Arbitrator"), designated in the same manner as the Arbitrator except that the Appeal Arbitrator must have at least twenty (20) years' experience in the active practice of law or as a judge. The Award, as confirmed, modified or replaced by the Appeal Arbitrator, shall be final and binding, and judgment thereon may be entered by any court having jurisdiction thereof. No other arbitration appeals may be made.

8.3.3 Confidentiality. Except as may be required by law or to the extent necessary in connection with a judicial challenge, permitted appeal, or enforcement of an Award, neither a Party nor an arbitrator may disclose the existence, content, record, status or results of a negotiation or arbitration. Any information, document, or record (in whatever form preserved) referring to, discussing, or otherwise related to a negotiation or arbitration, or reflecting the existence, content, record, status, or results of a negotiation ("Negotiation Record") or arbitration ("Arbitration Record"), is confidential. The arbitration hearing shall be closed to any person or entity other than the arbitrator, the parties, witnesses during their testimony, and attorneys of record. Upon the request of a Party, an arbitrator may take such actions as are necessary to enforce this Section 8.3.3, including the imposition of

sanctions.

8.3.4 Pre-hearing Procedure for Arbitration. The Parties will cooperate in good faith in the voluntary, prompt and informal exchange of all documents and information (that are neither privileged nor proprietary) relevant to the dispute or claim, all documents in their possession or control on which they rely in support of their positions or which they intend to introduce as exhibits at the hearing, the identities of all individuals with knowledge about the dispute or claim and a brief description of such knowledge, and the identities, qualifications and anticipated testimony of all experts who may be called upon to testify or whose report may be introduced at the hearing. The Parties and Arbitrator will make commercially reasonable efforts to conclude the document and information exchange process within sixty (60) calendar days after all pleadings or notices of claims have been received. At the request of a Party in any arbitration in which any disclosed claim or counterclaim exceeds \$250,000, the Arbitrator may also order pre-hearing discovery by deposition upon good cause shown. Such depositions shall be limited to a maximum of three (3) per Party and shall be limited to a maximum of six (6) hours' duration each. As they become aware of new documents or information (including experts who may be called upon to testify), all Parties remain under a continuing obligation to provide relevant, non-privileged documents, to supplement their identification of witnesses and experts, and to honor any understandings between the Parties regarding documents or information to be exchanged. Documents that have not been previously exchanged, or witnesses and experts not previously identified, will not be considered by the Arbitrator at the hearing. Fourteen (14) calendar days before the hearing, the Parties will exchange and provide to the Arbitrator (a) a list of witnesses they intend to call (including any experts) with a short description of the anticipated direct testimony of each witness and an estimate of the length thereof, and (b) pre-marked copies of all exhibits they intend to use at the hearing.

8.3.5 Arbitration Award. The arbitrator may award only monetary relief and is not empowered to award damages other than as set forth in this Agreement. The Award shall be in satisfaction of all claims by all Parties. Arbitrator fees and expenses shall be borne equally by the Parties. Postponement and cancellation fees and expenses shall be borne by the Party causing the postponement or cancellation. Fees and expenses incurred by a Party in successfully enforcing an Award shall be borne by the other Party. Except as otherwise provided in this Agreement, each Party shall bear all other fees and expenses it incurs, including all filing, witness, expert witness, transcript, and attorneys' fees.

8.3.6 Survival. The provisions of Section 8.3 shall survive expiration or termination of this Agreement, regardless of the cause giving rise hereto.

8.4 Arbitration Solely Between Parties; No Consolidation or Class Action.

Company and Provider agree that any arbitration or other proceeding related to a dispute arising under this Agreement shall be conducted solely between them. Neither Party shall request, nor consent to any request, that their dispute be joined or consolidated for any purpose, including without limitation any class action or similar procedural device, with any other proceeding between such Party and any third party.

9.0 MISCELLANEOUS

9.1 Amendments.

This Agreement constitutes the entire understanding of the Parties hereto and no changes, amendments or alterations shall be effective unless signed by both Parties, except as expressly provided herein. Company may amend this Agreement upon thirty (30) days prior written notice (an "Amendment"). Failure by Provider to object in writing to any such Amendment within thirty (30) days following receipt thereof constitutes Provider's acceptance of such Amendment. In the event that Provider reasonably believes that an Amendment is likely to have a material adverse impact upon Provider, Provider agrees to notify Company in writing, specifying the specific bases demonstrating a likely material adverse impact, and the Parties will negotiate in good faith an appropriate revised Amendment, if any, to this Agreement. Notwithstanding the foregoing, at Company's discretion, Company may amend this Agreement to comply with applicable law or regulation, or any order or directive of any governmental agency, without the consent of Provider, and this Agreement shall be deemed to be automatically amended to conform with all laws and regulations

promulgated at any time by any state or federal regulatory agency or authority having supervisory authority over this Agreement. Provider agrees that noncompliance with any requirements of this Section 9.1 will relieve Company or Government Sponsors and Members from any financial liability for the applicable portion of the Provider Services. Changes to Policies are addressed by Section 5.1 hereto.

9.2 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 breach thereof. To be effective, all waivers must be in writing and signed by an authorized officer of the Party to be charged. Provider waives any claims or cause of action for fraud in the inducement or execution related hereto.

9.3 Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced in accordance with, and governed by, the laws of the State where Provider is located.

9.4 Liability.

Notwithstanding Section 9.3, either Party's liability, if any, for damages to the other Party for any cause whatsoever arising out of or related to this Agreement, and regardless of the form of the action, shall be limited to the damaged Party's actual damages. Neither Party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever sustained as a result of a breach of this Agreement or any action, inaction, alleged tortious conduct, or delay by the other Party.

9.5 Severability.

Any determination that any provision of this Agreement or any application thereof is invalid, illegal or unenforceable in any respect in any instance shall not affect the validity, legality and enforceability of such provision in any other instance, or the validity, legality or enforceability of any other provision of this Agreement. Neither Party shall assert or claim that this Agreement or any provision hereof is void or voidable if such Party performs under this Agreement without prompt and timely written objection.

9.6 Successors; Assignment.

This Agreement relates solely to the provision of Provider Services by Provider and does not apply to any other organization which succeeds to Provider assets, by merger, acquisition or otherwise, or is an affiliate of Provider. Neither Party may assign its rights or its duties and obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld; provided, however, that Company may assign its rights or its duties and obligations to an Affiliate or successor in interest so long as any such assignment or delegation will not have a material impact upon the rights, duties and obligations of Provider.

9.7 Headings.

The headings contained in this Agreement are included for purposes of convenience only, and shall not affect in any way the meaning or interpretation of any of the terms or provisions of this Agreement.

9.8 Notices.

Except for any notice required under Article 6, Term and Termination, or if otherwise specified, notices required pursuant to the terms and provisions hereof may be effective if sent by letter, electronic mail or other generally accepted media. With respect to notices required under Article 6, notices shall be effective only if given in writing and sent by overnight delivery service with proof of receipt, or by certified mail return receipt requested. Notices shall be sent to the addresses set forth on the signature page of this Agreement (which addresses may be changed by giving notice in conformity with this Section 9.8). Provider shall notify Company of any changes in the information provided by Provider related to Provider's address.

9.9 Remedies.

Notwithstanding Sections 8.3 and 9.4, the Parties agree that each has the right to seek any and all remedies at law or equity in the event of breach or threatened breach of Section(s) 5.5, 6.6 and 7.3.

9.10 Non-Exclusivity.

This Agreement is not exclusive, and nothing herein shall preclude either Party from contracting with any other person or entity for any purpose. Company makes no representation or guarantee as to the number of Members who may select or be assigned to Provider.

9.11 Force Majeure.

If either Party shall be delayed or interrupted in the performance or completion of its obligations hereunder by any act, neglect or default of the other Party, or by an embargo, war, act of terror, riot, incendiary, fire, flood, earthquake, epidemic or other calamity, act of God or of the public enemy, governmental act (including, but not restricted to, any government priority, preference, requisition, allocation, interference, restraint or seizure, or the necessity of complying with any governmental order, directive, ruling or request) then the time of completion specified herein shall be extended for a period equivalent to the time lost as a result thereof. This Section 9.11 shall not apply to either Party's obligations to pay any amounts owing to the other Party, nor to any strike or labor dispute involving such Party or the other Party.

9.12 Confidentiality.

It is further understood and agreed by and among the Parties that the terms and conditions of this Agreement, except as otherwise specified, are and shall remain confidential, and shall not be disclosed by either Party without express written consent of the other Party or as required by law or by governmental authorities or by express order by a court having jurisdiction over the Party from whom disclosure is sought.

9.13 Entire Agreement.

This Agreement (including any attached schedules, appendices and/or addenda) constitutes the complete and sole contract between the Parties regarding the subject matter described above and supersedes any and all prior or contemporaneous oral or written representations, communications, proposals or agreements not expressly included in this Agreement and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral representations, communications, proposals, agreements, prior course of dealings or discussions of the Parties. The Parties understand and agree that this Agreement only applies to the Plans described in this Agreement and, likewise, this Agreement does not and will not supersede any agreement(s) between Company's affiliates and Provider that relates to Company's affiliates other lines of business that are not the subject of this Agreement (that are not the Plans described in this Agreement).

9.14 Signatures.

Facsimile and electronic signatures shall be deemed to be original signatures for all purposes of this Agreement.

9.15 Incorporation of Recitals.

The Parties incorporate the recitals into this Agreement as representations of fact to each other.

10.0 CONFIDENTIALITY OF MEMBER INFORMATION, HIPAA AND GLBA COMPLIANCE

10.1 Confidentiality, HIPAA and GLBA. Provider and Company agree that confidentiality of Member information must be safeguarded. Provider agrees to ensure that any information related to a Member is to be kept strictly confidential in accordance with all state and federal laws regarding, among other things, the confidentiality of patient records and shall not be released to any third party except as set forth in Article 5 and this Article 9 of the Agreement. According to the terms of Company's HMO enrollment forms, agreements with Members and applicable law, Company shall be able to obtain Member information from Provider without additional written release by the Member. Each party agrees to comply with all applicable requirements of TITLE II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 and its related regulations ("HIPAA"), including any and all requirements regarding the privacy and security of protected health information. It is understood and agreed that Provider is, and will be, a "business associate" of Company for purposes of HIPAA and a "service provider" of Company for purposes of GLBA because of the delegated functions it is performing on behalf of Company.

10.2 HIPAA and GLBA Definitions. For purposes of Sections 9.2 through 9.8 the following terms shall have the meaning set forth below:

- a. C.F.R. “C.F.R.” means the Code of Federal Regulations.
- b. Designated Record Set. “Designated Record Set” has the meaning assigned to such term in 45 C.F.R. 164.501.
- c. Member Information. “Member Information” means nonpublic personal financial and health information about a customer, whether in paper, electronic or other form. Member Information includes any such information provided by the customer as part of a request for information about, or an application for, a Company insurance product or service, even if no such insurance product or service is subsequently provided to the customer.
- d. Electronic Protected Health Information. “Electronic Protected Health Information” means information that comes within paragraphs 1(i) or 1(ii) of the definition of “Protected Health Information”, as defined in 45 C.F.R. 160.103.
- e. Individual. “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. 164.501 and shall include a person who qualifies as personal representative in accordance with 45 C.F.R. 164.502 (g).
- f. Privacy and Security Rules. “Privacy and Security Rules” means the regulations promulgated by the Department of Health and Human Services at 45 C.F.R. Parts 160-164, Subparts A, C and E, which regulations implement the privacy and security requirements of the Administrative Simplification provisions of HIPAA.
- g. Protected Health Information “Protected Health Information” shall have the same meaning as the term “Protected Health Information”, as defined by 45 C.F.R. 160.103, limited to the information created or received by Provider from or on behalf of Company.
- h. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. 164.501.
- i. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- j. Security Incident. “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. 164.304.
- k. Service Provider. “Service Provider” means any person or entity that provides services to Company and maintains, processes or otherwise is permitted access to Company’s Member Information.
- l. Standard Transactions. “Standard Transactions” means the electronic health care transactions for which HIPAA standards have been established, as set forth in 45 C.F.R. Parts 160-162.

10.3 Obligations and Activities of Provider with Respect to HIPAA.

- a. Provider agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law. Provider shall also comply with any further limitations on uses and disclosures agreed by Company in accordance with 45 C.F.R. 164.522 provided that such agreed upon limitations have been communicated to Provider according with Section 12.5.1.c of this Agreement.
- b. Provider agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Provider agrees to mitigate, to the extent practicable, any harmful effect that is known to Provider of a use or disclosure of Protected Health Information by Provider in violation of the requirements of this Agreement.

- d. Provider agrees to report to Company any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- e. Provider agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Provider on behalf of Company, agrees to the same restrictions and conditions that apply through this Agreement to Provider with respect to such information. In no event shall Provider, without Company's prior written approval, provide Protected Health Information received from, or created or received by Provider on behalf of Company, to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes or otherwise has access to the Protected Health Information outside of the United States.
- f. Provider agrees to provide access, at the request of Company, and in the time and manner designated by Company, to Protected Health Information in a Designated Record Set, to Company or, as directed by Company, to an Individual in order to meet the requirements under 45 C.F.R. 164.524. Company's determination of what constitutes "Protected Health Information" or a "Designated Record Set" shall be final and conclusive. If Provider provides copies or summaries of Protected Health Information to an Individual it may impose a reasonable, cost-based fee in accordance with 45 C.F.R. 164.524(c)(4).
- g. Provider agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Company directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of Company or an Individual, and in the time and manner designated by Company. Provider shall not charge any fee for fulfilling requests for amendments. Company's determination of what Protected Health Information is subject to amendment pursuant to 45 C.F.R. 164.526 shall be final and conclusive.
- h. Provider agrees to make (i) internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information received from, or created or received by Provider on behalf of, Company, and (ii) policies, procedures, and documentation relating to the safeguarding of Electronic Protected Health Information available to the Company, or at the request of the Company to the Secretary, in a time and manner designated by the Company or the Secretary, for purposes of the Secretary determining Company's compliance with the Privacy and Security Rules.
- i. Provider agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Company to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.
- j. Provider agrees to provide to Company, in the time and manner designated by Company, the information collected in accordance with Section 9.3i of this Agreement, to permit Company to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.
- k. Provider acknowledges that it shall request from the Company and so disclose to its affiliates, subsidiaries, agents and subcontractors or other third parties, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.
- l. With respect to Electronic Protected Health Information, Provider shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Company, as required by 45 C.F.R. Part 164, Subpart C.
- m. With respect to Electronic Protected Health Information, Provider shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it.
- n. Provider shall report to Company any Security Incident of which it becomes aware.

- o. If Provider conducts any Standard Transactions on behalf of Company, Provider shall comply with the applicable requirements of 45 C.F.R. Part 160-162.

10.4 Permitted Uses and Disclosures by Provider

10.4.1 General Use and Disclosure. Except as otherwise limited in this Agreement, Provider may use or disclose Protected Health Information to perform its obligations and Services to Company, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Company or the minimum necessary policies and procedures of the Company.

10.4.2 Specific Use and Disclosure Provisions

- a. Except as otherwise limited in this Agreement, Provider may use Protected Health Information for the proper management and administration of the Provider or to carry out the legal responsibilities of the Provider.
- b. Except as otherwise limited in this Agreement, Provider may disclose Protected Health Information for the proper management and administration of the Provider, provided that disclosures are Required By Law, or Provider obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Provider of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, Provider may use Protected Health Information to provide Data Aggregation services to Company as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- d. Provider may use Protected Health Information to report violation of law to appropriate Federal and state authorities, consistent with 45 C.F.R. 164.502 (j)(1).

10.5 Obligations of Company With Respect to HIPAA.

10.5.1 Provisions for Company to Inform Provider of Privacy Practices and Restrictions

- a. Company shall notify Provider of any limitation(s) in Company's notice of privacy practices that Company produces in accordance with 45 C.F.R. 164.520, to the extent that such limitation(s) may affect Provider's use or disclosure of Protected Health Information.
- b. Company shall provide Provider with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes affect Provider's use or disclosure of Protected Health Information.
- c. Company shall notify Provider of any restriction to the use or disclosure of Protected Health Information that Company has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Provider's use or disclosure of Protected Health Information.

10.5.2 Permissible Requests by Company. Except as may be set further in Section 9.4.2, Company shall not request Provider to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rules if done by Company.

10.6 Obligations of Provider With Respect to GLBA.

- a. Provider agrees to implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of Member Information that are appropriate to Provider's size, complexity, nature and scope of activities, and that is designed to:
 - (i) ensure the integrity and confidentiality of Member Information;

- (ii) protect against any anticipated threats or hazards to the security or integrity of Member Information; and
 - (iii) protect against unauthorized access to, or use of, Member Information that could result in substantial harm or inconvenience to any customer.
- b. Provider agrees to ensure that any agent, including a subcontractor, to whom it provides Member Information received from, or created or received by Provider on behalf of Company, agrees to the same restrictions and conditions that apply through this Agreement to Provider with respect to such Member Information.
- c. In no event shall Provider, without Company's prior written approval, provide Member Information (received from, or created or received by Provider on behalf of Company) to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes, or otherwise has access to the Member Information outside of the United States.
- d. Provider agrees to make policies, procedures, and documentation relating to the safeguarding of Member Information available to Company, or at the request of Company to the applicable state department of insurance, in a time and manner designated by the Company or department of insurance, for purposes of the department determining Company's compliance with GLBA.
- e. Provider agrees to affirm in writing, upon request from Company from time to time, Provider's continued compliance with its obligations under this Agreement.

10.7 Term and Termination.

- a. Term. Notwithstanding any provision to the contrary contained in this Agreement, the provisions of this Article 9 shall survive termination of this Agreement and shall only terminate when all of the Protected Health Information and Member Information provided by Company to Provider, or created or received by Provider on behalf of Company, is destroyed or returned to Company, or, if it is infeasible to return or destroy Protected Health Information and Member Information, protections are extended to such information, in accordance with the provisions in this Section.
- b. Effect of Termination.
 - i. Except as provided in paragraph b(ii) of this Section 9.7, upon termination of this Agreement, for any reason, Provider shall return or destroy all Protected Health Information and Member Information received from Company, or created, maintained, transmitted or received by Provider on behalf of Company. This provision shall apply to Protected Health Information and Member Information that is in the possession of subcontractors or agents of Provider. Provider shall retain no copies of the Protected Health Information or Member Information.
 - ii. In the event the Provider determines that returning or destroying the Protected Health Information or Member Information is infeasible, Provider shall provide to Company notification of the conditions that make return or destruction infeasible and the purposes of Provider's continued use. Upon mutual agreement of the parties that return or destruction of Protected Health Information or Member Information is infeasible and Provider has a legitimate purpose in continued use of the Protected Health Information or Member Information, Provider shall extend the protection of this Agreement to such Protected Health Information or Member Information and limit further uses and disclosures of such Protected Health Information or Member Information to those purposes that make the return or destruction infeasible, for so long as Provider maintains such Protected Health Information or Member Information.

10.8 Miscellaneous.

- a. Regulatory References. A reference in this Agreement to a section in the Privacy and Security Rules means the section as in effect or as amended.

- b. Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, the safeguarding of Electronic Protected Health Information or the safeguarding of Member Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either party may, by written notice to the other party, amend the Agreement in such manner as such party determines necessary to comply with such law or regulation. If the other party disagrees with such amendment, it shall so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, then either party may terminate this Agreement upon written notice to the other party, which effective date of termination shall be at least one hundred eighty (180) days following the receipt of such written notice of termination.
- c. Interpretation. Any ambiguity in this Article 9 shall be resolved to permit Company to comply with the Privacy and Security Rules and GLBA. In the event of any inconsistency or conflict between this Article 9 and any other agreement between the parties, the terms, provisions and conditions of this Article 9 shall govern and control.
- d. No third party beneficiary. Nothing express or implied in this Article 9 is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

10.9 HIPAA Omnibus. In order to comply with certain modifications to the Privacy and Security Rules promulgated January 25, 2013, Company and Provider shall comply with the following:

- a. To the extent Provider is to carry out one or more of Company's obligation(s) under Subpart E of 45 CFR Part 164, Company shall comply with the requirements of Subpart E that apply to Company in the performance of such obligation(s).
- b. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Provider agrees to ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Company agree in writing to the same restrictions and conditions that apply through this Agreement to Provider with respect to such information.
- c. Without limiting Company's remedies under any other provision of this Agreement, in the event of a Breach involving Unsecured Protected Health Information maintained, used or disclosed by Provider, Provider shall reimburse Company for the cost of providing any legally required notice to affected Individuals and the cost of credit monitoring for such Individuals to the extent deemed necessary by Covered Entity in its reasonable discretion.
- d. Provider shall not de-identify any Protected Health Information except as expressly authorized by Company.
- e. Company agrees to report to Provider any Breach of Unsecured Protected Health Information without unreasonable delay and in no case later than five (5) calendar days after Discovery of a Breach.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement by their duly authorized officers, intending to be legally bound hereby.

PROVIDER

By: _____

Printed Name: Mark W. Mitchell

Title: Mayor

Date: April 24, 2014

COMPANY

By: _____

Printed Name: Eddy Broadway

Title: President and Chief Executive Officer

Date: _____

ATTEST:

Brigitta Kuiper
City Clerk

APPROVED AS TO FORM:

Judith R. Baumann,
City Attorney

REIMBURSEMENT ADDRESS:

City of Tempe – Social Services Division

715 W. Fifth Street

Tempe, AZ 85281

MAIN TELEPHONE NUMBER: 480-858-2462

MAYOR: Mark W. Mitchell

AGREEMENT CONTACT: Kim Bauman

FEDERAL TAX I.D. NUMBER: 86-6000262

As required by Section 9.8 (“Notices”) of this Agreement, notices shall be sent to each Party at the following addresses:

To Provider at:

City of Tempe-Social Services Division

715 W. Fifth Street

Tempe, AZ 85281

Attn: Kim Bauman

To Company at:

Mercy Maricopa Integrated Care

4350 E. Cotton Center Blvd.

Building D

Phoenix, AZ 85040

Attn. Network Development

SERVICES AND COMPENSATION SCHEDULE

1.0 COMPENSATION

Fee for Service

Provider shall be paid, for Covered Services provided to Members under the terms of this Agreement, those fee amounts set forth in the applicable Mercy Maricopa Integrated Care Fee Schedule (defined below).

2.0 SERVICES

Provider will be reimbursed for those Covered Services in accordance with the terms of this Agreement that are within the scope of and appropriate to the Provider's license and certification to practice.

3.0 GENERAL COMPENSATION TERMS AND CONDITIONS

Definitions

Mercy Maricopa Integrated Care Fee Schedule (MMICFS) – A fee schedule that is based upon the contracted location where service is performed, the State of Arizona's AHCCCS Fee Schedule and the ADHS/DBHS Allowable Procedure Codes. The MMICFS may be updated by Company, and Company will provide Provider with advance written notice of any such updates.

General

- A. Member Cost Share. Rates are inclusive of any applicable Member financial responsibility.
- B. Financial Withhold of \$15,000 per fiscal year will be applied to this contract pending approval of all required deliverables including but not limited to CFI, CRA, Quarterly and Annual Reports, and other required program implementation and evaluation tools.
- C. With proper justification, Provider may include an allocation for administrative costs for up to 14% of the grant request. Administrative costs may include direct charges for costs of financial, accounting, contracting or general legal services, costs of internal evaluation, including overall organization's management improvement costs, and costs of general liability insurance that protects the organization(s) responsible for operating a project, other than insurance costs solely attributable to the project. Administrative costs may also include that portion of salaries and benefits of the project's director and other administrative staff not attributable to the time spent in support of a specific project. Mercy Maricopa does not honor federally approved indirect rates higher than 14%.

PROGRAM PARTICIPATION SCHEDULE

Provider agrees to participate in the Plans and other health benefit programs listed herein:

Those plans and programs offered by Mercy Maricopa Integrated Care within the state of Arizona, including but not limited to the Regional Behavioral Health Authority Program and Mercy Maricopa Advantage Medicare plans (including D-SNP or other Medicare-Medicaid Eligible demonstration plan).