

## ADMINISTRATIVE SERVICES AGREEMENT

**Instructions for completion:** This Administrative Services Agreement includes three parts: (1) Part I ("Agreement and Employer Information") shall be completed by Employer (defined below); (2) Part II ("Employer Execution") should be signed by a duly authorized representative of Employer; and (3) Part III ("Agreement Terms and Conditions") state the terms and conditions of ConnectYourCare's ("CYC") performance of administration services to Employer.

**NO CHANGES, ALTERATIONS, REVISIONS, OR ANY OTHER MODIFICATIONS, HANDWRITTEN OR VIA WORD PROCESSOR (COLLECTIVELY, "CHANGES") TO PART III (INCLUDING THE EXHIBITS THERETO) SHALL BE ACCEPTED BY CYC UNLESS SEPARATELY AGREED TO IN WRITING IN THE FORM OF A CONTRACT AMENDMENT SPECIFICALLY REFERENCING THIS ADMINISTRATIVE SERVICES AGREEMENT, AND ANY ATTEMPT TO MAKE ANY CHANGES TO PART III SHALL BE DEEMED NULL AND VOID.**

### PART I: AGREEMENT AND EMPLOYER INFORMATION

(To be completed by Employer)

Employer Name \_\_\_\_\_

Date Agreement Effective: \_\_\_\_\_

Effective Date of Initial Plan Year: \_\_\_\_\_

Employer Address for all Notices: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### PART II: EMPLOYER EXECUTION

(To be completed by Employer)

**INTENDING TO BE LEGALLY BOUND**, the Parties, each duly authorized, have executed this Administrative Services Agreement, effective as of the date set forth above.

**CONNECTYOURCARE, LLC**

**EMPLOYER**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

### **PART III: AGREEMENT TERMS AND CONDITIONS RECITALS**

- A. Employer may choose to offer to its employees various types of health savings programs;
- B. Employer may offer to its employees a Health Reimbursement Arrangement ("HRA") as described in the regulations underlying Internal Revenue Code of 1986, as amended, (the "Code") § 105 and 106;
- C. Employer may offer to its employees a Health Flexible Spending Arrangement ("FSA") as described in the regulations underlying Code § 125;
- D. Employer may offer to its employees a Dependent Care Assistance Program ("DCAP") Flexible Spending Arrangement as described in Code § 129 and regulations underlying Code § 125;
- E. The above are collectively referred to as "The Program" or "The Programs;"
- F. Employer may offer to its employees a Health Savings Account ("HSA") described in Code § 223;
- G. The HSA is funded by a related trust (the "Trust") which is intended to satisfy the requirements of Code § 223 and for which UMB Bank serves as trustee ("Trustee");
- H. Employer's employees may elect to enroll in an HSA under the terms set forth in the UMB Bank Health Savings Account (HSA) Enrollment Form and Agreements;
- I. Employer may desire CYC to provide, in conjunction with the Trustee, certain assistance to Employer in connection with the HSA, all as more fully described in this Agreement, and CYC is willing to provide those services;
- J. Employer may desire CYC to perform certain administrative services with respect to the Program and the HSA as more fully described in this Agreement, and CYC is willing to perform those services.

In consideration of the mutual promises set forth in this Agreement, and other consideration, the exchange, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **AGREEMENT**

- 1. **Services.** CYC shall provide to Employer (or the employees electing the HSA) those HSA-related services described in Exhibit A. CYC shall provide to Employer (or the Employees electing the Program) those Program-related services described in Exhibit B.
  - a) **Nature of Services.**
    - i) **Administrative Services Only.** Employer understands and agrees that CYC's sole function under this Agreement is to act as recordkeeper or provide other administrative services in accordance with the terms of this Agreement. Under the terms of this Agreement, CYC does not render investment advice, is not the "plan administrator," trustee or a fiduciary, as these terms or other analogous

terms may be defined under applicable state, local, or federal law, and does not provide legal, tax or accounting advice with respect to the creation, adoption or operation of the HSA and the Programs or the Trust. CYC is not an insurer or guarantor of any benefits provided under the Program and in no event will CYC be obligated to use any of its own funds to provide benefits under the Program. Providing adequate funding for benefits and expenses due under, or in connection, with the Program is the sole responsibility of Employer.

- ii) Discontinuance of Services Inconsistent with Role. If, based on changes in the applicable regulatory structure or the interpretation of the regulatory structure, there is a reasonable likelihood that any service being, or to be, provided under this Agreement by CYC could constitute a discretionary function and thereby subject CYC to classification as a “fiduciary” under applicable state, local, or federal law with respect to the HSA or the Program, and such service could not be restructured in a manner that would not subject CYC to classification as a “fiduciary” under applicable state, local, or federal law, then CYC, upon reasonable notice to Employer may decline to thereafter provide that service. The failure to provide any such service shall not constitute a breach of CYC’s obligations under this Agreement.
  - iii) Not ERISA Benefit Plan. If Employer offers the HSA to its employees, Employer shall do so in such a manner that it will not constitute an “employee welfare benefit plan” within the meaning of ERISA § 3(1) or an “employee pension benefit plan” within the meaning of ERISA § 3(2), and acknowledges that any services provided by CYC with respect to the HSA need not comply with ERISA requirements.
  - iv) Compliance Responsibility. Employer is solely responsible for ensuring that the HSA and the Program comply with all applicable provisions of the Code and any applicable federal, state, and local laws governing the HSA and the Program. CYC is responsible for ensuring that the Services are provided in a manner compliant with all applicable provisions of the Code and any applicable federal, state, and local laws governing the Services.
  - v) Reliance Upon Data. All services provided by CYC hereunder shall be based on information supplied by Employer or any other designee or agent of Employer (as designated by Employer). Employer acknowledges that the timely provision of accurate, consistent and complete HSA and Program Data in the format specified by CYC is essential to its delivery of services, and Employer is responsible for ensuring such timely and accurate data is delivered to CYC in CYC’s approved format. For these purposes, “HSA and Program Data” means all data and records supplied to CYC, obtained by CYC or produced by CYC (based on data or records supplied to, or obtained by, CYC) in connection with performing the services pursuant to this Agreement. HSA and Program Data include current participant names, addresses, status and contribution amounts.
- b) Data in Electronic Format. Employer agrees that administrative, contribution and recordkeeping data shall be in an electronic format acceptable to CYC and will be

updated as CYC requires for proper processing. If the data is not submitted in an electronic format or if the format of the data requires additional translation, formatting or cleansing, CYC reserves the right to approve or refuse such submission and to charge additional data-handling fees as required.

- c) Reliance Upon Persons Designated by Employer. Employer will provide names and other information for persons authorized to take actions for or provide information on behalf of the HSA and the Program or the Trust. Until notified of a change, CYC may reasonably rely upon this information and may act upon instructions received from and/or on information provided by these named persons. CYC has the right to assume that those persons continue to be authorized unless notified otherwise in writing.
- d) Customer Service.
  - i) Customer Service Representatives. For HSA, FSA, DCAP, and HRA accounts, customer service representatives will be available at a toll free telephone number 24 hours a day, 7 days a week (except for emergency closings) to assist participants. CYC reserves the right to change the customer service representatives' hours of availability upon reasonable advance notice to the Employer.
  - ii) Internet Services. CYC will provide access to CYC's website as described in **Section 1(e)** of this Agreement to allow participants and Employer to access certain account information and for participants to file claims.
  - iii) Participant Statement of Account. Participants will have access to their accounts through CYC's website as described in **Section 1(e)** of this Agreement.
- e) Basic Benefits Portal System Services.
  - i) Participant Portal. CYC will provide participants with access to CYC's portal system. This system will allow online claim filing. The participant will also have online access to the following:
    - 1. Real-time history of claim submission and payment process;
    - 2. Account management with transaction history and account balance;
    - 3. Contribution data; and
    - 4. Education tools.
- 2. **Compensation.** In consideration for the services provided hereunder, Employer shall pay CYC in accordance with the Fee Schedule provided in Exhibit C. CYC may amend the schedule for services not yet rendered upon giving notice in writing under the same conditions specified in **Section 9(b)** of this Agreement. Employer shall pay all invoiced fees by utilizing an Automated Clearing House ("ACH") Electronic Funds Transfer ("EFT"), and all fees are due upon receipt of CYC's invoice. If Employer is billed for CYC services by the designee, Employer shall pay the designee all invoiced fees utilizing the method and due dates agreed to by Employer and the

designee. In connection with the operation of its business activities, CYC may be entitled to certain bank interchange (or similar) fees. Such fees are for CYC's sole benefit and are assets of CYC in which CYC retains all title, interest and rights, including the right to allocate a portion of such CYC assets to other service providers.

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3. **Use of Agents or Subcontractors.** CYC may perform any of the services described in this Agreement through agents and subcontractors selected by CYC. CYC shall reasonably supervise any such agent or subcontractor, and the retention of agents or subcontractors shall not relieve CYC of its duties hereunder.
4. **CYC not Legal Counsel.** Employer understands and agrees that it shall review with its legal and/or tax counsel all documents and information provided to it by CYC and that Employer shall consult such counsel on any questions concerning Employer's responsibilities under this Agreement, the HSA and the Program documents, and the legal sufficiency of any documents so provided. Employer understands that neither CYC nor any of CYC's other affiliates are permitted to provide Employer with legal or tax advice or otherwise engage in the practice of law. Employer acknowledges that it will not rely on any documents or information provided as if it were legal or tax advice, and CYC shall not be liable for any legal or tax consequences resulting from such reliance.
5. **Notice of Errors; Correction of Errors; Improvements.** All information supplied to Employer or participant will be deemed correct if notice of discrepancies is not given to CYC by the participant or Employer within ninety (90) days of issuance of the report statement, confirmation, or other information. After that period, CYC will correct statements or transactional errors reflected on these statements, but will not be liable for consequential damages due to any errors not reported within that period.

Additionally, CYC reserves the right to correct administrative errors or make improvements from time to time, without prior approval of the Employer, in order to facilitate the accuracy of the Services, facilitate the competitiveness of the Services, correct flaws in the Services, or to otherwise satisfy business or operational needs.

6. **Indemnification.**
  - a) **Indemnification of CYC.** Employer shall hold harmless and indemnify CYC and its employees, agents, and subcontractors ("Indemnitees") from and against any loss, damage, liability, claims, costs and expenses, including reasonable attorneys' fees ("Liabilities"), to which the Indemnitees may become subject, which result from:
    - i) Any misrepresentation or nonfulfillment of any terms of this Agreement by the Programs, Employer, or Participant including, but not limited to, liabilities resulting from the provision of inaccurate, untimely, or incomplete information to CYC or the failure to provide CYC with clear instructions as to distributions;

- ii) Any failure by Employer, or Participant to comply with the terms of the HSA and the Program;
  - iii) A violation by Program, Employer or Participant of the requirements of applicable state, local and/or federal laws;
  - iv) The making by CYC of any benefit payment based upon instructions that CYC reasonably believes to be authorized; and
  - v) Any action, conduct or activity, including the failure to take action or to perform any activity taken by CYC at the direction of Employer or Trustee or in accordance with the Program.
- b) Indemnification of Employer. Except as provided in this **Section 6** or otherwise in this Agreement, CYC shall hold harmless and indemnify Employer and its employees from and against any loss, damage, liability, claims, costs and expenses, including reasonable attorneys' fees, to which Employer may become subject, which are caused directly by the gross negligence or willful misconduct by CYC.
- c) General Conditions of Indemnification. The indemnified Party shall:
- i) Give written notice to the indemnifying Party of any indemnified claim, demand or action within fifteen (15) business days after it has knowledge thereof;
  - ii) Permit the indemnifying Party at its option to assume control of the defense of such claim, demand or action;
  - iii) Give full cooperation in the investigation and defense on request;
  - iv) Use its best efforts to mitigate the damages; and
  - v) Not compromise or settle such claim, demand or action without the indemnifying Party's written consent.

## 7. Limitation of Liability.

- a) IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, AS A RESULT OF ACTIONS OR OMISSIONS DURING THE TERM OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF: 1) THE APPLICABLE INSURANCE LIMITS AS STATED IN **SECTION 8**, AS MAY BE AMENDED; OR 2) OR THE AMOUNTS ACTUALLY PAID BY EMPLOYER FOR THE ADMINISTRATION SERVICES PROVIDED BY CYC FOR THE YEAR PRECEDING THE DATE THE CAUSE OF ACTION AROSE. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO A PARTY'S LIABILITY FOR CLAIMS COVERED BY **SECTION 23**.
- b) Exclusion of Consequential and Related Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EACH PARTY WILL NOT, UNDER ANY CIRCUMSTANCES, HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR

SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OR LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. **Insurance.** CYC represents that as of the Effective Date of this Agreement it has, and agrees that it shall maintain during the term, at least the following insurance coverage:

- a) Worker's Compensation- minimum limits required by law.
- b) Employer's liability insurance- \$1,000,000 per occurrence; \$2,000,000 in the aggregate.
- c) Commercial general liability- \$1,000,000 per occurrence; \$2,000,000 in the aggregate.
- d) Umbrella liability- \$1,000,000 per occurrence; \$2,000,000 in the aggregate.
- e) Crime and fidelity- \$1,000,000 per occurrence; \$2,000,000 in the aggregate.
- f) Errors and Omissions- \$1,000,000 per occurrence; \$2,000,000 in the aggregate.
- g) Cyber- \$1,000,000 per occurrence; \$2,000,000 in the aggregate.

9. **Term; Termination; Successor Recordkeeper.**

- a) Term. The term of this Agreement shall commence on the Effective Date and continue until \_\_\_\_\_ (the "Initial Term"), unless terminated earlier as provided in **Section 9(b)**. After the Initial Term, this Agreement shall automatically extend for additional periods of one (1) year each (a "Renewal Term") unless either Party gives the required written notice of termination prior to the end of the then-current term. Any such notice by Employer must be received by CYC at least 180 days prior to the end of the then-current term.
- b) Termination. Either party may terminate this Agreement by providing written notice at least 180 days prior to the end of the Initial Term or 180 days prior to each subsequent Renewal Term. Such notice shall be deemed to have been received three (3) days after mailing in the U.S. mail or immediately upon receipt if delivered to the address set forth in **Section 10** of this Agreement. The notice period may be waived by the party entitled to the notice.

- c) Run-Out Period. If the Agreement is terminated at the end of the plan year, CYC will, for the ninety (90) day period immediately following the date of termination ("Run-Out Period"), continue to administer claims for expenses incurred in the previous year in the manner described in this Agreement. If the Agreement is terminated mid-plan year, CYC will, for the ninety (90) day period following the date of termination, facilitate the conversion to Employer's new administrator ("Conversion Period"). Upon expiration of the Run-Out Period or Conversion Period, all obligations of CYC to administer claims or perform any other services under this Agreement shall cease. Employer shall pay the fees associated with such Run-Out Period services or Conversion Period services as listed in Exhibit C.
  - d) Transition Assistance. Upon termination, the Parties agree that CYC shall have no further duty or responsibility to provide Services to Employer under this Agreement except as provided in **Section 9(c)** of this Agreement. However, CYC will use reasonable efforts to transfer all relevant non-proprietary information concerning the HSA and the Program that CYC deems necessary for future operations, in CYC's standard format, to Employer or to a successor service provider. Any unforeseeable or unusual costs or expenses incurred by CYC in effecting this transfer shall be paid by Employer unless waived in writing by CYC. Employer agrees that CYC may charge reasonable fees for the provision of requested records or reports that CYC previously provided. Although CYC does not decide appeals on behalf of Client, CYC may charge a reasonable fee for research related to future appeals of claims adjudicated while CYC was administrator.
  - e) Survival of Indemnification and Protection of Confidential Information. Employer acknowledges and agrees that the indemnification provisions of **Section 6** and the obligations regarding the protection of Confidential Information under **Section 23** of this Agreement shall survive the termination of this Agreement for a period of one (1) year.
10. **Notices**. Any notice or other communication required under this Agreement shall be in writing and shall be delivered personally, sent by certified, registered or express mail, postage prepaid. Any such notice shall be deemed received when so delivered personally, or, if mailed, three (3) business days after the date of deposit in the U.S. mail, as follows:
- If to CYC: 307 International Circle, Suite 200, Hunt Valley, MD 21030. Attn: General Counsel
- If to Employer: Address in Part I
11. **Entire Agreement; Amendment**. This Agreement, including the Exhibits hereto, which are specifically incorporated herein contains the entire Agreement among the Parties hereto with respect to the subject matter hereof, and there are no other Agreements written or oral, relating to the subject matter hereof other than those explicitly set forth herein or attached hereto. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by duly authorized representatives of both Parties.
12. **Construction**. This Agreement is the result of negotiation by both Parties, and, therefore, no claim shall be made to construe any portion of the Agreement against either Party on the basis of such Party's participation in the negotiating thereof.



13. **Binding Effect; No Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and legal representatives. Neither this Agreement, nor any right hereunder, may be assigned by any Party without the written consent of the other Parties hereto. Notwithstanding the foregoing, this Agreement may be assigned by CYC to a successor entity without prior written consent of Employer.

14. **Representations and Warranties.**

a) **CYC Representations and Warranties.** CYC represents and warrants that: (i) CYC has the requisite authority to execute, deliver and perform this Agreement; (ii) no contractual obligations exist that would prevent CYC from entering into this Agreement, or performing its obligation under either agreement; (iii) CYC has all material licenses and permits from all applicable regulatory authorities required for it to lawfully engage in the business in which it is engaged, including without limitation the activities contemplated by this Agreement; (iv) CYC has the legal right to use all trademarks, service marks or other intellectual property that CYC uses in performance of the Services, except that CYC makes no representation or warranty with respect to any trademark, service mark or other intellectual property supplied by Employer; (v) the Program-related documents furnished by CYC, and CYC's Services to implement the Program comply in all material respects with applicable federal, state, and local law; and (vi) to the best of its knowledge and belief, upon the advice of its legal counsel, CYC's performance of Services for Employer does not bring CYC within the definition of "Covered Entity" under HIPAA and its implementing regulations as of the Effective Date of this Agreement.

b) **Employer Representations and Warranties.** Employer represents and warrants that: (i) Employer has the requisite authority to execute, deliver and perform this Agreement; (ii) no contractual obligations exist that would prevent Employer from entering into this Agreement; (iii) Employer and its Affiliates have all material licenses and permits from all applicable regulatory authorities required for them to lawfully perform their obligations as set forth in this Agreement and the Exhibits attached hereto; and (iv) Employer has the legal right to use all trademarks, service marks or other intellectual property that Employer uses in connection with its business.

c) **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING THE APPLICABLE EXHIBITS, CYC AND EMPLOYER MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CYC'S AND EMPLOYER'S OBLIGATIONS SHALL BE SUBJECT TO THE LIMITATION OF LIABILITY PROVISIONS OF SECTION 7 OF THIS AGREEMENT.

15. **Publicity.** Either Party, its representatives, employees or agents may issue a media release, public announcement or publicity relating to this Agreement or the name or logo of the other Party. The content of such release, announcement or publicity shall be subject to the prior written approval of the other Party.

16. **Headings.** The headings in this Agreement are for reference only, and shall not affect the interpretation of this Agreement.

17. **Severability.** If any word, phrase, sentence, paragraph, provision or section of this Agreement shall be held, declared, pronounced or rendered invalid, void, unenforceable or inoperative for any reason by any court of competent jurisdiction, governmental authority, statute or otherwise, such holding, declaration, pronouncement or rendering shall not adversely affect any other word, phrase, sentence, paragraph, provision or section of this Agreement, which shall otherwise remain in full force and effect and be enforced in accordance with its terms.
18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Maryland. The forum for any legal disputes shall be limited to courts within the State of Maryland, and Employer consents to the personal jurisdiction therein.
19. **Third Party Beneficiaries.** The provisions of this Agreement are solely for the benefit of the Parties hereto and their affiliates and are not intended to confer upon any person except the Parties hereto any rights or remedies herein.
20. **Unforeseen Circumstances.** CYC shall not be liable for any default or delay in the performance of its services under this Agreement if and to the extent such default or delay is primarily caused, directly or indirectly, by:
- a) Fire, flood, elements of nature or other acts of God;
  - b) Any outbreak or escalation of hostilities, terrorist actions, war, riots or civil disorders in any country;
  - c) Any act or omission of the other party or any governmental authority; or
  - d) Nonperformance of a third party or any similar cause beyond the reasonable control of CYC, including without limitation, failures or fluctuations in telecommunications or other equipment.

In any such event, CYC shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and CYC continues to use reasonable efforts to recommence performance or observance as soon as practicable.

21. **Writing and Signature; Electronic Transactions.** Unless otherwise explicitly required by law:
- a) Any requirement for a writing under this Agreement may be rendered in any form that can reliably reproduce an accurate physical record of the communication and authenticate the source, including but not limited to facsimile transmission, electronic mail, or Internet transmission.
  - b) Any requirement of a signature under this Agreement may be rendered in any form clearly indicated by the signatory to be a signature or which complies with instructions directly given to the signatory as to the proper form of indicating a signature in an electronic or voice response environment. Appropriate forms include, but are not limited to, personal identification numbers rendered over the Internet, and facsimile transmissions.

- c) Notwithstanding a) or b), above, the recipient of any writing or signature under this Agreement may require the confirmation of any writing or signature in physical form (such as hand or typewritten or the equivalent) with a manual signature.
  - d) Employer represents that the HSA and the Program document(s) will allow for transactions to be made by electronic means. Under the HSA and the Program document(s) and this Agreement together, notices, consents and other actions by or on behalf of, or with respect to, the HSA and the Program, its participants and their respective beneficiaries ("HSA & Program Transactions") may be effected, in whole or in part, by electronic means. Any HSA and Program Transactions relating to services provided under this Agreement may be initiated or effected by Employer, the Program, a participant or a beneficiary by use of CYC-authorized electronic means, Internet access system (including the CYC website) or telephone service line. Use of electronic means for HSA and Program Transactions is subject to the terms and conditions established by CYC and disclosed to Employer and participants, and electronic transactions shall be binding on the parties if CYC, acting in good faith, believes that such transactions are authorized by Employer, a participant, or beneficiary, as applicable.
22. **Change in Trustee.** Upon prior written notice to Employer, a new trustee may be substituted for the existing Trustee. Such substitution shall not alter the obligations of CYC or Employer under this Agreement.
23. **Confidential Information.**
- a) **Definition.** The term "Confidential Information" shall mean the terms and conditions of this Agreement and all proprietary information, data, trade secrets, business information, financial information, tax and legal opinions, customer and prospect lists, supplier lists, business forecasts, processes, methodologies, algorithms, merchandising and marketing plans and materials, and other information of any kind whatsoever, the confidential or proprietary nature of which is reasonably apparent under the circumstances, and which: (i) a party or its affiliates or subcontractors ("Discloser") discloses, in writing, orally or visually, to the other Party or its Affiliates or subcontractors ("Recipient") or to which Recipient obtains access in connection with the negotiation and performance of this Agreement; and (ii) relates to: (a) the Discloser; (b) the customers and/or associates of a party or its affiliates or subcontractors; or (c) clients or participants who have made confidential or proprietary information available to a party or its affiliates or subcontractors. Confidential Information shall not include any information that: (i) is public knowledge at the time of disclosure; (ii) at the time of disclosure is already in the lawful possession of the other party or its affiliates or subcontractors; (iii) was made available to the other party or its affiliates or subcontractors, without restriction on disclosure, by a third party not under obligation of confidentiality with respect to the disclosed information; or (iv) information which a party or its affiliates or subcontractors independently develops.
  - b) **Protection of Confidential Information.** Each of the Parties, as Recipient, hereby agrees on behalf of itself and its employees, officers, affiliates and subcontractors that Confidential Information of the other Party (and of its affiliates and subcontractors) shall be kept in confidence and shall not be disclosed or made available, directly or indirectly,

to any person for any reason whatsoever, other than on a “need to know basis” and then only to: (i) its employees and officers; (ii) subcontractors and other third parties specifically permitted under this Agreement, provided that all such persons are subject to a confidentiality agreement which shall be no less restrictive than the provisions of this Section 23 and as otherwise provided in this Agreement; (iii) independent contractors, agents, and consultants hired or engaged by a party, provided that all such persons are subject to a confidentiality agreement which shall be no less restrictive than the provisions of this Section 23 and otherwise provided in this Agreement; and (iv) as required by law or as otherwise permitted by this Agreement, either during the term of this Agreement or after the termination of this Agreement. Each Party shall use Confidential Information of the other party only for the purposes of performing its obligations under this Agreement. A Party shall use at least the same degree of care to protect the other Party’s Confidential Information as it uses to protect its own information, which shall in any event be no less than reasonable care. A Party shall promptly notify the other Party of any actual or suspected loss or unauthorized use, disclosure of or access to the other Party’s Confidential Information. Prior to any disclosure of Confidential Information as required by law, the Recipient shall: (i) notify the Discloser of any actual or threatened legal compulsion of disclosure, and any actual legal obligation of disclosure immediately upon becoming so obligated; and (ii) cooperate with the Discloser’s reasonable, lawful efforts to resist, limit or delay disclosure.

- c) Destruction/Return of Confidential Information. Upon the termination or expiration of this Agreement, or at any time upon the request of a Party, the other Party shall return or destroy (and cause its affiliates and subcontractors to return or destroy) all Confidential Information, including Customer Information, in the possession of such party or in the possession of any third party over which such party has or may exercise control. However, to the extent such Confidential Information is necessary for the Recipient to perform one or more obligations that survive the termination or expiration of this Agreement, the Recipient shall not be required to return or destroy such Confidential Information until all such surviving obligations have been satisfied. Notwithstanding anything to the contrary herein, each Party shall be entitled to retain one (1) copy of any Confidential Information of the other Party for archival purposes or to satisfy any statutory or future legal requirements. Any such retained Confidential Information shall be protected as described in this **Section 23**.
- d) Security. CYC shall maintain and monitor all Program operations and customer support including, but not limited to, eligibility and enrollment file processing, payroll deduction file processing, platform operation, web sites and customer service, and all other repositories of Client and Participant information in connection with the Program through qualified personnel using security measures no less protective than current industry standards to prevent loss, alteration or unauthorized access to hosted or transmitted data. CYC will maintain and safeguard the confidentiality of all Confidential Information by using information security processes no less protective than the current standard in the industry, including, but not limited to, encryption of data, and in compliance with Governmental Requirements, to maintain and transmit this information.

- e) Security Event. Should CYC learn of or have reason to believe that Confidential Information has been disclosed or accessed by an unauthorized party ("Security Event"), CYC will promptly or sooner, if required by applicable federal and state laws, statutes, rules and regulations, give Employer notice of such Security Event. If there is a Security Event, CYC will comply with all applicable laws relating to such Security Event and will provide reasonable cooperation to Employer in carrying out its legal obligations under applicable laws relating to the Security Event. CYC acknowledges that: (i) the law may require it to notify the individuals whose information was disclosed that a Security Event has occurred; and (ii) it will not notify the individuals unless legally required to do so and, if permitted by law, until it has consulted with Employer.

## **EXHIBIT A**

### **HSA RESPONSIBILITIES AND OBLIGATIONS**

This Exhibit A is made by and between CYC and Employer and is hereby incorporated into the Administrative Services Agreement executed between the Parties.

This Exhibit A sets forth the responsibilities and obligations of each Party with respect to HSAs created and administered pursuant to the Administrative Services Agreement, and also describes the Parties' expectation with respect to services that will be provided by the custodian of the HSA (the "Custodian").

1. **Enrollment and Communications.** CYC will provide its standard enrollment kit with standard forms and notices necessary to implement the HSA's administration, including the HSA Enrollment Form, Agreement, and Terms and Conditions, all in electronic format, necessary to implement the administration with the Trustee. Customized enrollment and communication materials may be provided at additional cost, as more fully described in Exhibit C. CYC will be reimbursed for costs incurred when using design and production facilities outside of CYC, these costs to be Employer-reviewed and approved in advance.
2. **HSA Administration and Recordkeeping.**
  - a) **Participant Accounts with the Trustee.** Each participant in the HSA must establish his or her own HSA Trust Account with the Trustee. The Trustee will establish and maintain a participant HSA account for each program participant for whom it receives complete enrollment information. CYC is not responsible for determining if such participants are eligible under the terms of the program or for maintaining such accounts.
  - b) **Participant Files.** CYC maintains electronic records for all participants for whom participant accounts have been established.
  - c) **Transfer of HSA funds.** Employer agrees to establish a payroll deduction for the HSA. CYC will notify Employer after each contribution cycle is processed as to cumulative HSA funds processed for that period. Employer will allow CYC to initiate transfer via Automated Clearing House (ACH) Electronic Funds Transfer (EFT) from Employer's designated bank account the cumulative HSA funds processed for that period. CYC will deposit these funds into a pre-established sweep account managed by CYC. CYC will remit the funds to the Trustee for deposit into each employee's HSA in accordance with an agreement between CYC and the Trustee. CYC will retain funds only for as long as necessary to complete the transfer of funds to the Trustee.
  - d) **Reports.** CYC will provide Employer with the ability to produce program-level reports utilizing the information maintained on its recordkeeping system. Standard reports will summarize all transactions that occurred for each participant and report new enrollees within the specified time period.
3. **HSA Document.** All documents pertaining to the HSA will be provided by the Trustee.

4. **CYC Healthcare Payment Card**. CYC will provide participants with a healthcare payment card integrated with the participant's account. The payment card will allow the participant's account balance to automatically transfer to the payment card. The payment card can be used at any eligible healthcare merchant provided the merchant has properly configured the merchant code to identify itself correctly. Cardholders are subject to the terms and conditions described in the cardholder agreement, which will be provided with the payment card.

## **EXHIBIT B**

### **EMPLOYER-SPONSORED ACCOUNT RESPONSIBILITIES AND OBLIGATIONS**

This Exhibit B is made by and between CYC and Employer and is hereby incorporated into the Administrative Services Agreement executed between the Parties.

This Exhibit B sets forth the responsibilities and obligations of each Party with respect to FSAs, DCAPs, and HRAs (collectively, “the Program”) created and administered pursuant to the Administrative Services Agreement.

1. **Enrollment and Communications.** CYC will provide its standard enrollment kit with standard forms and notices necessary to implement the Program’s administration, all in electronic format. Customized enrollment and communication materials may be provided at additional cost, as more fully described in Exhibit C. CYC will be reimbursed for costs incurred when using design and production facilities outside of CYC, these costs to be Employer-reviewed and approved in advance.
2. **Compliance With Applicable Governing Law.** Employer is solely responsible for all Program documents and for ensuring that the Program complies with all applicable provisions of the Internal Revenue Code and any applicable state and local laws governing the Program. CYC will provide basic Program information, such as participant counts, that is readily available on its systems to assist Employer with complying with the requirements of the Code.
3. **Administration and Recordkeeping.**
  - a) **Participant Accounts.** CYC will establish participant accounts for each Program participant for whom it receives complete enrollment information. CYC is not responsible for determining if such Program participants are eligible under the terms of the Program.
  - b) **Participant Files.** CYC maintains electronic records for all participants for whom participant accounts have been established.
  - c) **Transfer of Funds.** Employer agrees to establish a payroll deduction for the Program as applicable. In addition, Employer agrees to advance benefit payments on behalf of the plan by transferring funds from its own general assets to CYC in an amount equal to:
    - i) for clients with 200 or more participants enrolled, 4% of expected annual Program contributions, but not less than \$250, or
    - ii) for clients with fewer than 200 participants enrolled, 10% of expected annual Program contributions, but not less than \$250,this amount to be known as the Required Minimum Funding. This advance, or initial deposit, will be made prior to the Effective Date of Initial Plan Year and will be used by CYC to pay claims.
    - iii) On a weekly basis, Employer will allow CYC to initiate a transfer via ACH EFT from Employer’s designated bank account. The amount transferred will be the amount necessary to return the existing deposit balance to the Required



Minimum Funding. In this manner, CYC will, each week, have available an amount equal to the Required Minimum Funding to facilitate payment of claims for the week. Employer agrees to grant CYC authority to write checks for the payment of allowable expenses under the Program.

- iv) On a quarterly basis, CYC will re-calculate the Required Minimum Funding based on the expected annual Program contributions for all Participants active at that time. If the re-calculated Required Minimum Funding exceeds the previously used Required Minimum Funding by 25% or more, the Required Minimum Funding will be replaced by the new calculation. This adjustment to the Required Minimum Funding will be part of the weekly process provided for in **Section 3(c)(iii)** of this Exhibit B.
- v) In no event will CYC be obligated to issue claim payments of any kind or cause payment card payments to be approved if the existing deposit balance falls below zero.

d) Claims Processing.

- i) Review of Claims. CYC will review claims in accordance with standards set forth under applicable law, including IRS guidelines concerning eligible expenses, and Department of Labor claims procedure regulations. Employer retains the authority to decide appeals. CYC shall have no discretionary authority with respect to the processing of claims under the Program as such claims shall be processed in accordance with the framework of policies, interpretations, rules, practices and procedures, established by Employer for the Program. CYC's services under this Agreement are solely ministerial and non-discretionary in nature.
- ii) Payment of Claims. CYC will process claims within five (5) business days of the date CYC receives a claim request from a participant. Checks, if applicable, will be issued within two (2) scheduled weekly check payment cycles, upon receipt of claims in good order. Claims are in "good order" when the reimbursement request contains all pertinent information, including information required to substantiate the claim. CYC will not reimburse a participant's claim unless the participant has sufficient funds in his/her Program at the time the claim is submitted. If the participant does not have sufficient funds in his/her Program at the time the claim is submitted, the reimbursement request will be held by CYC and processed in accordance with the time frame described in this paragraph starting with the date that such funds are available.

For the Health FSA only, CYC will reimburse a participant's claim up to the amount the participant has elected to contribute to the Health FSA for the year minus any amounts previously reimbursed, whether or not the participant has sufficient funds in his Health FSA account at the time the claim is submitted, in accordance with IRS regulations.

- iii) Unsubstantiated Claims/Ineligible Expenses. If a participant is not able to substantiate a claim, or if payment for an expense is advanced through the debit

card and subsequently deemed ineligible for reimbursement, CYC will offset against future contributions, and if necessary, attempt to collect these amounts from the participant. Where CYC is unsuccessful, Employer will be responsible for collecting such amounts. CYC will make data available to the Employer that identifies the employees and amounts to enable Employer to deduct an amount

- iv) equal to the unsubstantiated or ineligible reimbursement from the participant's paycheck or to add to the participant's taxable wages, as allowed by state law.
  - e) Reports. CYC will provide Employer with the ability to produce Program-level reports utilizing the information maintained on its recordkeeping system. Standard reports will summarize all transactions that occurred for each participant and report new enrollees within the specified time period.
4. **Plan Document**. Maintenance of a document consistent with the Program operations and all legal requirements is the responsibility solely of Employer.
- a) Maintenance of Documents. CYC will provide a sample plan document to Employer if requested. CYC will use reasonable best efforts to provide updates to Employer in a timely manner after changes in the law and regulation. Employer will inform CYC of changes it desires to the Program prior to the time CYC is expected to implement those changes.
  - b) Preparation of Amendments. The preparation of amendments, other documentation, or systems changes to implement amendments will be billed at CYC's hourly service rates listed in Exhibit C.
5. **CYC Healthcare Payment Card**. CYC will provide participants with a healthcare payment card integrated with the participant's account. The payment card will allow the participant's account balance to automatically transfer to the payment card. The payment card can be used at any eligible merchant provided the merchant has properly configured the merchant code to identify itself correctly. Cardholders are subject to the terms and conditions described in the cardholder agreement, which will be provided with the payment card.

## **EXHIBIT C**

### **FINANCIAL TERMS AND ASSUMPTIONS**

This Exhibit C is made by and between CYC and Employer and is hereby incorporated into the Administrative Services Agreement executed between the Parties.

This Exhibit C sets forth the fees, charges, terms and assumptions related to the Services provided pursuant to the Agreement.

#### **1. Administration Fees.**

Monthly fee per account participant per month (PPPM)	
Account Type: FSA/DCA	\$3.95
Account Type: HRA	\$3.95
Account Type: HSA	\$3.95
Secondary Account: any combination multiple product	\$1.00
Run-Out Period Services	\$3.50 per participant, one-time charge for 90 days of service
Conversion Period Services (run-in or mid plan year termination)	\$3.50 per participant, one-time charge for 90 days of service
Set up fee (one time charge)	\$250.00
Renewal fee per Program (waived first year)	\$100.00
Trust services (HSA only)	Included
HSA Investment Fees (annual)	\$25.00 Charged to Participant
Healthcare Payment Card Services	Included
Additional Payment Card	Included
Returned check/ Automated Clearinghouse (ACH)	\$25.00

## 2. Additional Services Fees.

Enrollment meetings:	\$1000 per meeting plus the cost of travel and expenses										
<p>Non-discrimination Testing</p> <p>Cost per testing run performed based on the total number of employees included for testing.</p> <table border="1"> <tr> <th>Number of employees</th><th>Cost</th></tr> <tr> <td>Up to 500</td><td>\$200 cafeteria plan, \$200 per account type tested</td></tr> <tr> <td>501 to 2500</td><td>\$300 cafeteria plan, \$300 per account type tested</td></tr> <tr> <td>2501 to 5000</td><td>\$500 cafeteria plan, \$500 per account type tested</td></tr> <tr> <td>5001 or more</td><td>\$1000 cafeteria plan, \$1000 per account type tested</td></tr> </table>		Number of employees	Cost	Up to 500	\$200 cafeteria plan, \$200 per account type tested	501 to 2500	\$300 cafeteria plan, \$300 per account type tested	2501 to 5000	\$500 cafeteria plan, \$500 per account type tested	5001 or more	\$1000 cafeteria plan, \$1000 per account type tested
Number of employees	Cost										
Up to 500	\$200 cafeteria plan, \$200 per account type tested										
501 to 2500	\$300 cafeteria plan, \$300 per account type tested										
2501 to 5000	\$500 cafeteria plan, \$500 per account type tested										
5001 or more	\$1000 cafeteria plan, \$1000 per account type tested										
Customized material design	Hourly Rate = \$125.00										
Additional data handling fee:	Hourly Rate = \$125.00										
Additional print services:	<p>The price per page for printed <b>standard materials</b> is as follows:</p> <p>Quad fold brochures (minimum 5,000): \$0.14/page, plus shipping;</p> <p>Two-sided color copies (minimum 500): \$0.32/page, plus shipping.</p> <p>Black and white postal correspondence: \$1.00/page, postage included.</p> <p><b>Customized materials</b> will incur an additional charge of \$200 per hour for design and development.</p> <p><b>Pricing increases if minimums not met.</b></p>										