

## TRADEMARK AND COPYRIGHT LICENSE AGREEMENT

This Trademark and Copyright License Agreement ("**Agreement**") is made effective as of the date in Boise, Idaho when you click on the "I Agree" or "I Accept" button positioned on the referring page containing the link to this Agreement (the "**Effective Date**"), and is between you (the "**Licensee**") and the Idaho Health Insurance Exchange, an independent body corporate and politic established by Idaho Code § 41-6101 *et seq.*, doing business as Your Health Idaho ("**YHI**") with an address at P.O. Box 943 Boise ID, 83701 ("**YHI**").

**IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT USE THE MARKS OR THE WORKS. YOUR USE OF THE MARKS OR THE WORKS CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT.**

### TRADEMARK TERMS

WHEREAS, YHI, over a period of time and as the result of the expenditure of its time, skill and effort, has developed and owns valuable, distinctive trademarks and service marks and other trade names, trade dress, trademarks, service marks, domain names, logos and commercial symbols including those set forth in **Exhibit One**, which Exhibit may be amended by YHI from time to time (collectively, the "**Marks**");

WHEREAS, YHI is the sole owner of the right, title and interest, together with the goodwill associated with the Marks; and

WHEREAS, YHI is willing to grant a nonexclusive license to Licensee for the use of the Marks.

1. Subject to the terms and conditions herein, YHI hereby grants to Licensee a nonexclusive, nonsublicensable, terminable, royalty-free license and right within the confines of the state of Idaho (the "**Territory**") to use the Marks solely in connection with YHI-provided marketing materials (the "**Approved Use**"). Licensee agrees to use the Marks only in connection with the Approved Use, and will not use any aspect of the Marks with respect to any other business activity without YHI's prior written approval.

2. Both parties agree to notify the other of any suspected infringements or imitations of the Marks, or of any suspected unauthorized use of the Marks, or of any challenges to the validity of the Marks, ownership of the Marks and/or use of the Marks. Licensee, upon direction or consent of YHI, shall institute, defend, direct and control any judicial, arbitration and/or administrative proceedings and actions involving the Marks. In the event Licensee refuses to undertake the defense or prosecution of any such proceedings affecting the mark or design, may do

so in which event Licensee shall reimburse YHI for the cost of the defense or prosecution of the same. Licensee agrees to undertake all such actions and to execute all documents necessary to effectuate the forgoing.

3. Licensee shall not, during the term of this Agreement and thereafter, use or appropriate any form of commercial identification that may be confusingly similar to the Marks, or use, register or appropriate any domain name, social media handle or social media username that contains the Marks, except as permitted otherwise herein or in writing by YHI. This Section shall survive termination of this Agreement, and any properties acquired by Licensee in contravention of this covenant shall be and hereby are assigned by Licensee to YHI.

4. It is agreed that all businesses utilizing the Marks shall be operated in accordance with all applicable federal standards and local laws and regulations and in no event shall Licensee take any action or conduct in their business or sell any product or provide any service that in any way would reflect adversely on the name and reputation of YHI or the Marks.

5. Licensee acknowledges that the Marks have acquired a valuable secondary meaning and goodwill with the public and that enterprises bearing such trademarks and offering such branded services have acquired a reputation of high quality. Accordingly, Licensee agrees not to use or permit third parties to use the Marks in any manner whatsoever which directly or indirectly will derogate or detract from such reputation. Moreover, YHI reserves the right to inspect and monitor Licensee's use of the Marks to ensure that Licensee is complying with YHI's strict quality control standards. All goodwill arising from Licensee's use of the Marks shall inure to the benefit of YHI.

6. Upon expiration of this Agreement, all rights of Licensee granted herein shall terminate and cease, and the rights of Licensee pursuant to this Agreement shall revert to YHI. YHI may act and is hereby authorized by Licensee to act as the attorney in fact for Licensee to execute any and all assignments or documents relating to the transfer and assignment of the rights of Licensee in such Agreements.

7. Notwithstanding any provision contained herein to the contrary, YHI reserves all rights pertaining to the Marks except as specifically granted herein to Licensee.

8. Nothing herein shall be construed to constitute the parties hereto as partners or as joint venturers or as agents of the other. **Licensee is not a franchisee and has no expectation of any particular return on investment**, and to the extent any regulatory body takes a contrary position, the parties agree to amend this Agreement as may be required so that it will reflect the non-franchise relationship.

## COPYRIGHT TERMS

9. YHI grants to Licensee and Licensee accepts from YHI for the duration of the term of this Agreement a royalty-free, non-exclusive, revocable, non-sublicensable and non-transferable license under YHI's copyrights (the "**License**") in the United States for the term of this Agreement to publicly display and publicly perform the items identified in Exhibit A (the "**Works**") expressly and only for use in connection with YHI-provided marketing materials (the "**Licensed Use**"). All other rights are expressly reserved to YHI.

10. Subject only to the License, YHI shall retain all right, title and interest in and to the Works and all derivative works.

11. Licensee may make one copy of the Works for backup and archival purposes. Licensee must reproduce and include the copyright and trademark notices (including digital watermarks or other digital rights management technologies) and any other notices that appear on the original Works on all copies, including backup and archival copies, and any media therefor.

12. Except as otherwise expressly permitted herein, Licensee and its principals, agents and employees shall not (and shall not allow any third party) to: (i) remove any product identification, copyright, trademark or other notices (including digital watermarks or other digital rights management technologies); (ii) provide, lease, lend, rent, or otherwise use or allow others to use the Works to or for the benefit of third parties, including but not limited to entities with which the Licensee or the principals of the Licensee are affiliated in any way; or (iii) modify, or, except to the extent expressly authorized herein, incorporate into or with other music or media or create a derivative work of any part of the Works.

13. THE WORKS AND MEDIA ON WHICH THEY ARE RECORDED ARE PROVIDED BY YHI "AS-IS" AND WITH ALL FAULTS ACCEPTED, WITH NO WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND. NO DEALER, AGENT OR EMPLOYEE OF YHI IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS OR ADDITIONS TO THIS SECTION. YHI MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW) WITH RESPECT TO THE WORKS OR OTHER MATERIALS PROVIDED BY YHI. YHI EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSEE MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERMISSIBLE DURATION. MOREOVER, IN NO EVENT WILL WARRANTIES PROVIDED BY LAW, IF ANY, APPLY UNLESS THEY ARE REQUIRED TO APPLY BY STATUTE.

14. On YHI's written request Licensee shall furnish YHI with a signed certification certifying that the Works are being used pursuant to the terms of this Agreement including any copy and user limitations. With prior reasonable notice, YHI may audit the copies of the Works in use by Licensee provided such audit is during regular business hours. In the event the audit reveals a material discrepancy on the part of Licensee, then in addition to YHI's other remedies

hereunder Licensee shall pay YHI as liquidated damages and not as a penalty the sum of \$1,000.00 USD.

## **GENERAL PROVISIONS**

15. This Agreement shall terminate at the option of YHI in the event that Licensee has failed to correct, within thirty (30) days after written notice has been given by YHI, any of the following items:

- a. Violation of any terms of this Agreement;
- b. Improper use of the Marks or the Works that could adversely affect the validity or protectability of such Marks or Works or affect other disparagement of YHI or the brand; or
- c. Failure to file reports or maintain records, as required by this Agreement and any local governmental authority.

Further, YHI may terminate this Agreement at any time on ninety (90) days' written notice to Licensee. Upon termination of this Agreement, whether for default or another reason, Licensee agrees to immediately discontinue the use of the Marks and the Works; and Licensee shall remove and/or obliterate any sign or designation containing the Marks. Licensee also agrees that it will discontinue the use of any and all printed goods which bear a trademark that is the same as or could be construed as an imitation of any of the Marks or the Works.

16. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, YHI SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY (i) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE FEES PAID TO YHI BY LICENSEE; (ii) FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, FOR ANY LOST PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS); OR (iii) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO LICENSEE.

17. Licensee shall indemnify, save and hold harmless YHI from any and all liabilities, claims, causes of action, suits, damages and expenses (including reasonable attorneys' fees) for which YHI may become liable or may incur or be compelled to pay in any action or claim against

YHI for or by any reason of acts, whether of omission or commission, which may be committed or suffered by Licensee or any of its servants, agents or employees.

18. This Agreement and the rights of the parties hereto shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, however, Licensee may not assign this Agreement without prior written consent of YHI. YHI may assign this Agreement at any time.

19. This Agreement shall be construed and enforced under the laws of the State of Idaho, except for its choice of law provision. Licensee hereby irrevocably consents to the jurisdiction of and venue within the state or federal courts located in Ada County, Idaho for the resolution of any disputes arising out of or related hereto.

20. The invalidity or unenforceability of any individual provisions of this Agreement shall not affect any other provisions thereof, but the remaining provisions of this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

21. In the event that it becomes necessary for either party to institute an action against the other in order to secure or protect rights under this Agreement, the prevailing party shall be entitled to recover in any judgment such reasonable attorneys' fees as may be allowed by the court, together with such court costs and damages as may be provided by law.

22. No waiver by YHI of any default in performance by Licensee, or any waiver by YHI of any breach, or series of breaches, of any of the terms, covenants or conditions of this Agreement shall constitute a waiver of any subsequent breach of said terms, covenants or conditions.

23. The remedies under this Agreement shall be cumulative and not alternative and the election of one remedy for a breach shall not preclude pursuit of other remedies unless as expressly provided in this Agreement.

24. All notices, statements, and reports required or permitted by this Agreement shall be in writing and deemed to have been effectively given and received: (i) five (5) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested; (ii) when transmitted if sent by email; or (iii) when delivered if delivered personally or sent by express courier service. Notices shall be addressed as follows:

If to Licensee:

Via Email, as provided by Licensee during submission

If to YHI:

Via Email to [communications@yourhealthidaho.org](mailto:communications@yourhealthidaho.org)

25. The relationship created by this Agreement is one of independent contractors, and not partners, franchisees or joint venturers. No employees, consultants, contractors or agents of one party are employees, consultants, contractors or agents of the other party, nor do they have any authority to bind the other party by contract or otherwise to any obligation, except as expressly set forth herein. Neither party will represent to the contrary, either expressly, implicitly or otherwise.

26. Licensee acknowledges and agrees that there are no third party beneficiaries of this Agreement.

27. If any covenant set forth in this Agreement is determined by any court to be unenforceable by reason of its extending for too great a period of time or by reason of its being too extensive in any other respect, such covenant shall be interpreted to extend only for the longest period of time and to otherwise have the broadest application as shall be enforceable. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, which shall continue in full force and effect.

28. This Agreement, together with all Exhibits hereto, constitutes the complete, final and exclusive statement of the terms of the Agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions of the parties. No modification or rescission of this Agreement shall be binding unless executed in writing by the party to be bound thereby. In the event of any conflict between the terms and conditions of this Agreement and an Exhibit, the terms and conditions of the Exhibit shall prevail.

29. Either party shall be excused from any delay or failure in performance hereunder, except the payment of moneys by Licensee, caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, earthquake, floods, lightning, labor disputes and strikes, other labor or industrial disturbances, riots, war, acts of the public enemy, insurrections, embargoes, blockages, regulations or orders of any government, agency or subdivision thereof, shortages of materials, rationing, utility or communication failures, casualty, novelty of product manufacture or other unanticipated product development problems, and governmental requirements. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay; provided that such party shall give notice of such force majeure event to the other party as soon as reasonably possible.

30. In construing the terms of this Agreement, no presumption shall operate in either party's favor as a result of that party's counsel's role in drafting the terms or provisions hereof. Further, it is agreed that Licensee has had a full and fair opportunity to review the terms herein and to consult with legal counsel before subscribing. Accordingly, because Licensee has had

ample review opportunities and because Licensee is and was free to elect not to accept these terms, Licensee acknowledges that this is not a contract of adhesion.

31. Each party represents that all corporate action necessary for the authorization, acceptance and delivery of this Agreement by such party and the performance of its obligations hereunder has been taken.

32. Any taxes on income to Licensee generated through use of the Marks or the Works shall be the sole responsibility of Licensee.

33. To the extent Licensee receives inquiries from any third party(ies) relating to the Works or the Marks, e.g., inquiries regarding titles of the Works, authorship, or YHI identity, Licensee shall respond that it is using the Works or Marks under license from YHI and shall provide the inquiring third party(ies) with YHI's contact information.

**EXHIBIT ONE**  
**(the “Marks”)**

Those YHI trademarks contained within the YHI marketing materials provided to Licensee by YHI.



**EXHIBIT TWO**  
**(the “Works”)**

That copyrightable subject matter contained within the YHI marketing materials provided to Licensee by YHI.