



SUBSCRIPTION AGREEMENT

This Subscription Agreement ("**Agreement**"), by and between Transcarent, LLC, a Delaware corporation with offices located at 4700 S. Syracuse Street, Suite 900, Denver, CO 80237 ("**Transcarent**"), and Yellowstone County, a Montana municipality with offices located at 217 N. 27th Street, Billings, MT 59101 ("**Employer**" as further defined in Section 1 (Definitions) below), is effective as of the date of the last signature below (the "**Effective Date**"). Transcarent and Employer are referred to from time to time herein, individually, as a "**Party**" and, collectively, as the "**Parties**."

Recitals

WHEREAS, Transcarent operates and maintains a Platform (as defined below) that, among other things, makes available software applications allowing individuals to access primary health care services, including, having their medical questions addressed and receiving diagnoses, treatments, referrals, follow-ups, and health and wellness-related reminders; and

WHEREAS, Transcarent has entered into an agreement with 98point6 Physicians PC, a Washington professional services corporation ("**98point6 Physicians PC**"), pursuant to which licensed physicians and other licensed medical providers provide Medical Services (as defined in Section 1 below). The Medical Services are made available to individuals through the Platform; and

WHEREAS, Employer sponsors group health plan(s) and wants to include access to the Transcarent Platform and Medical Services in the group health plan(s) coverage it provides to its employees and their dependents.

Agreement

Therefore, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement, capitalized terms have the meanings set forth below:

"**98point6 Physicians PC**" has the meaning set forth in the Recitals.

"**ACA**" means the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, as further amended.

"**Access**" means the acts of reading, writing, modifying, or communicating PHI or otherwise using related system resources to access PHI.

"**Administrative Safeguards**" means administrative safeguards as that term is defined and used in the Privacy Laws.

"**Affiliates**" means any related entity of a Party that directly or indirectly controls, is controlled by, or is under common control with such Party.

"**Agreement**" means this Subscription Agreement.



“**Authorization**” means an individual’s signed permission that complies with the Privacy Laws and permits a covered entity or a business associate to use PHI described in the permission for the purpose, or purposes, stated in the permission and disclose the PHI described in the permission to the recipients stated in the permission.

“**BAA**” means the Business Associate Agreement to be executed by the Parties concurrent with the execution of this Agreement which is attached hereto as Exhibit B and incorporated into this Agreement.

“**Communication Systems**” means communication facilities, networks, platforms, devices, and other systems, including the internet and the platforms and devices through which the Services may be made accessible.

“**Confidential Information**” means information of any type disclosed by one Party (“**Discloser**”) to the other Party (“**Recipient**”), regardless of form, that is marked confidential or that, due to the character of the information or the circumstances under which it is disclosed by the Discloser, Recipient knows, or should know, is the proprietary or confidential information of Discloser. For the avoidance of doubt, Confidential Information includes the terms of this Agreement. Further, the SOC2 Audit Report and all marketing and promotional materials provided to Employer by Transcarent that pertain to the Services (including pricing and other proposals) are considered the Confidential Information of Transcarent.

“**Discloser**” has the meaning set forth in the definition of Confidential Information.

“**Effective Date**” has the meaning set forth in the first paragraph of this Agreement.

“**Eligible Participant**” means (a) an Employee whose information is included in the Eligibility File; and (b) a dependent of any age of an Employee whose information is included in the Eligibility File, subject to change if Transcarent changes the age of patients it provides Services to.

“**Eligibility File**” means a set of information provided by Employer to Transcarent that lists Eligible Participants and indicates each Eligible Participant’s enrollment status with the Plan. The Eligibility File includes demographic information such as full name, date of birth, employee ID, and last four (4) digits of Social Security Number.

“**Employee**” means a United States benefits-eligible employee of Employer who is enrolled to participate in one or more health benefits and welfare programs sponsored by Employer, including a Plan.

“**Employer**” means Yellowstone County, a Montana municipality, and its United States Affiliates that have employees that participate in the Plan.

“**Employer Data**” means data and Confidential Information of Employer provided to or accessed by Transcarent during the Term of the Agreement. For the avoidance of doubt, Employer Data does not include Participant Data.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Excepted Services**” has the meaning set forth in the definition of Services.



“**Feedback**” means any suggestions or ideas provided to Transcarent by Employer regarding the Services.

“**Fees**” means the fees calculated in Exhibit A (Fees and Payment) that Employer shall pay to Transcarent for provision of the Services, as may be updated from time to time pursuant to Exhibit A which is attached hereto and incorporated into this Agreement.

“**FMV**” means fair market value.

“**Force Majeure Event**” means an event not within a Party’s reasonable control, including but not limited to, floods, fires, storms, or other acts of God; war or acts of public enemy, including terrorism, or civil disturbance; strikes, lockouts, shortage of labor, labor disputes or labor trouble; problems in obtaining raw materials or production facilities; power failure, equipment failure, or transportation shortages or failures; actions of any governmental or other authority, including but not limited to public health or other states of emergency and the orders and directives issued in response thereto; or any other similar event.

“**HDHP**” means a High Deductible Health Plan.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“**HITECH Act**” means the Health Information Technology for Economic and Clinical Health Act, also known as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, as amended.

“**HSA**” means a Health Savings Account.

“**Implementation Plan**” means a plan for implementation of the Services.

“**Increase Fee**” has the meaning set forth in Exhibit A.

“**Indemnifying Party**” means a Party responsible for indemnifying the other Party’s Indemnitees pursuant to Section 9 (Indemnifications).

“**Indemnitee**” means a Party and its Affiliates, and their respective directors, officers, employees, agents, contractors, successors, and assigns, that are indemnified by an Indemnifying Party pursuant to Section 9 (Indemnifications).

“**Informational Materials**” means informational content and other materials which Transcarent makes available and are designed to provide Eligible Participants with useful information about the Services, including an announcement concerning the relationship contemplated by this Agreement, a landing page, email and other forms of notice, and printed materials.

“**Marketing Materials**” means press releases, use cases, and other promotional and marketing materials that market and promote the Services and the relationship contemplated by this Agreement developed by the Parties according to the terms of Section 5 (Informational Materials, Marketing Materials, and Use of Marks).



“Marks” means the trademarks, trade names, service marks, and logo designs of a Party.

“Medical Services” means the services rendered by Providers via the Platform to Participants. Such services may include addressing healthcare questions, assessing patients, forming diagnoses and treatment plans, and ordering tests or medications. Such services may or may not include administrative functions such as documenting referrals or assisting with pharmacy needs or fulfilling other administrative requests, which are services that may be performed by a Provider or may be performed by administrative or clinical staff, including but not limited to registered nurses, medical assistants, or others.

“Participant” means an Eligible Participant that is (i) authorized by Employer to access and use the Services, and (ii) completes the registration process to access and use the Services.

“Participant Data” means Personal Data or PHI related to a Participant that is collected, generated, or provided to Transcarent or 98point6 Physicians PC by the Participant, or a third party acting on behalf of or at the direction of the Participant, in connection with Transcarent’s performance of the Services.

“Party” or **“Parties”** has the meaning set forth in the first paragraph of this Agreement.

“Personal Data” means information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic identity of that natural person.

“Plan” means one or more self-insured or fully insured group health plan(s) or program(s) sponsored by Employer under which the Services are made available to Eligible Participants.

“Plan Documents” means benefit plan documents (e.g., documents required by ERISA).

“Plan-Related Third-Party Claims” means claims made by government agencies with respect to the Plan or Plan design, Eligible Participants, Participants, Plan, other Employer-sponsored plans, or Employer’s subsidiaries, Affiliates, agents or third-party vendors or providers of services to the Employer, Plans or other Employer-sponsored plans.

“Platform” means, collectively, the software platform hosted, operated, and maintained by Transcarent and the mobile applications made available by Transcarent through which Transcarent makes the Medical Services accessible to and available for use by Participants pursuant to this Agreement, as updated, upgraded, customized, improved, adapted, or otherwise modified from time to time by Transcarent. For the avoidance of doubt, the Platform does not constitute a software as a service product.

“Privacy Laws” means (a) HIPAA; (b) Subtitle D of the HITECH Act; (c) regulations promulgated thereunder by the US Department of Health and Human Services, including the HIPAA Omnibus Final Rule, which amended the Privacy Rule and the Security Rule (as those terms are defined under HIPAA) pursuant to the HITECH Act, extending certain HIPAA obligations to business associates and their subcontractors, and (d) any other state or federal privacy, cybersecurity, data breach notification, or data protection laws, in each case, as such laws, rules, and regulations have been and may be amended from time to time, that may apply to Eligibility Files or Participant Data.



“Protected Health Information” or **“PHI”** means protected health information as that term is defined under HIPAA (specifically, 45 CFR § 160.103), but is limited to the information created, received, maintained, or transmitted by Transcarent for or on behalf of Employer or Plan.

“Provider” means a licensed physician, nurse practitioner, or other licensed clinician of 98point6 Physicians PC or another professional services corporation or other professional limited liability entity with which 98point6 Physicians PC has entered into a contract to render licensed physician and other licensed clinical provider services.

“Recipient” has the meaning set forth in the definition of Confidential Information.

“Representatives” means a Party’s employees, officers, directors, legal advisors, financial advisors, contractors, consultants, and Affiliates.

“Service Order” has the meaning set forth in Section 4.1.

“Services” means, collectively, the Platform provided or otherwise made accessible to Participants by Transcarent pursuant to this Agreement, the Medical Services, and the other services described in Section 2.1 (Services), which are initiated by a Participant accessing the Platform. Services do not include those services where Transcarent has been engaged by a third party to perform medical services on the third party’s behalf (**“Excepted Services”**). Excepted Services are initiated from a platform other than the Platform. Third parties may include but are not limited to clinical laboratories, diagnostic testing companies, or other healthcare providers.

“SOC 2 Audit Report” means a Service Organization Control (SOC 2) Type 2 security audit and report applicable to the Services.

“Subscription Commencement Date” means the date identified in Exhibit A (Fees and Payment) upon which Transcarent will first make the Services available for access to and use by Participants.

“Subscription Period” means the period of time identified in Exhibit A (Fees and Payment) during which Transcarent will make the Services available for access to and use by Participants.

“Taxes” means taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value- added, sales, use, or withholding taxes.

“Term” has the meaning set forth in Section 6.1 (Term).

“Third-Party Claims” means actions, claims, suits and demands brought against a Party by a third party in relation to this Agreement, and the damages, liabilities, losses, costs and other expenses (including without limitation reasonable attorneys’ fees, costs, penalties, fines, interest or disbursements) awarded to such third parties.

“Transcarent Property” means (a) the Services, including any and all authorized and unauthorized modifications thereto and derivative works thereof; (b) any and all work product, designs, drawings, developments, concepts, inventions, information, data, programs, and software designed, developed, or distributed as part of the Services, (c) any and all proprietary



information and materials provided by Transcarent to Employer or otherwise made accessible to Employer by Transcarent that are related to the Platform, including documentation, software (whether in object code or source code form), text, graphics (including the underlying web-presentation code of the Platform or Medical Services), logos, button icons, images, and non-public know-how, methodologies, equipment, or processes used by Transcarent to operate and maintain the Platform or make accessible the Services, (d) all patents, copyrights, moral rights, trademarks, trade secrets, and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations, related to any of the foregoing, and (e) the Informational Materials and Marketing Materials.

2. SERVICES, DATA SECURITY

2.1 Services. Transcarent will provide or otherwise make accessible the Services in accordance with the terms and conditions of this Agreement. The Platform and Medical Services will be provided during the Subscription Period, while other Services described below may be provided prior to the Subscription Commencement Date. If the Subscription Commencement Date changes, Transcarent shall notify Employer of the new Subscription Commencement Date and Subscription Period for Employer's records. The term Services, as used in this Agreement, also include the services provided by Transcarent to Employer pursuant to Section 2.1.1 (Plan Documents Provided by Transcarent), 2.1.2 (Implementation Plan), 2.1.3 (Rendering of the Medical Services by Providers), and 2.1.4 (Scopes of Work) below and are subject to the terms and conditions set forth therein:

2.1.1 Plan Documents Provided by Transcarent. Upon request, and no additional charge, Transcarent will provide Employer with template Plan Documents, in which case, Employer acknowledges and agrees that such Plan Documents (a) do not constitute any legal or financial advice with respect to tax, benefits, or other laws; (b) are only provided as a courtesy to Employer, and Employer is required to independently seek legal, financial, and other advice as to the appropriateness and legality of such Plan Documents prior to signing and distributing them; and (c) are Employer's sole responsibility and Transcarent will have no liability or responsibility whatsoever with respect to such Plan Documents.

2.1.2 Implementation Plan. The Parties will begin to mutually determine and document an Implementation Plan immediately following the Effective Date. The Implementation Plan will include, but not be limited to, a detailed plan for communications to Eligible Participants from Transcarent, pursuant to which Eligible Participants are timely notified about the Parties' joint plans to make the Services available and provided with instructions on how they can access the Services. Such communications will be mutually planned by the Parties in order to maximize the number of Participants, and the Parties hereby agree to cooperate in good faith to achieve that goal. The Parties acknowledge that implementing the Services on the Subscription Commencement Date requires completion of the steps and milestones described in the Implementation Plan, including such planned communications. In the event such steps and milestones are not completed by the dates set forth in the Implementation Plan, the Parties may revise the Implementation Plan.

2.1.3 Rendering of the Medical Services by Providers. Providers render the Medical Services via the Platform to Participants. The Medical Services rendered to Participants are performed based on the independent medical judgment of such Providers and are the sole responsibility of those individual Providers. Transcarent ensures that



Providers are contractually obligated to provide Medical Services in accordance with applicable laws.

2.1.4 Scopes of Work. From time to time, the Parties may execute one or more scopes of work (each a "**Scope of Work**") that describes the specifications, implementation, roles and responsibilities, pricing, and other details required for Transcarent to provide additional services not identified in this Agreement. Each Party agrees to perform its respective obligations under a Scope of Work in accordance with the terms and conditions of this Agreement and the terms and conditions of the applicable Scope of Work. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of a Scope of Work, the terms and conditions of the Agreement shall control unless the Scope of Work explicitly states otherwise. Each Scope of Work shall be executed in the format attached to this Agreement as Exhibit C, except as otherwise agreed to by the Parties. Once a Scope of Work is executed by each Party's authorized representatives, it shall thereby be incorporated into and made a part of this Agreement.

2.2 Data Security.

2.2.1 General. Transcarent will, at all times, establish and maintain environmental, security and other safeguards against the destruction, loss or alteration of Participant Data and Employer Data in the possession of Transcarent and during the access, transmission, storage and shipping thereof that must comply with and be no less rigorous than (a) any law applicable to Transcarent, including the Privacy Laws; and (b) as provided in this Agreement. Further, Transcarent shall maintain a Business Continuity Plan that addresses disruption and disaster recovery of the Services, Employer Data, and Participant Data.

2.2.2 Collection and Use of Participant Data by Transcarent. Subject to applicable law, Transcarent will collect Participant Data from Participants and make such Participant Data available to Participants and Providers. If Transcarent obtains or is provided one or more valid Authorizations or other permissions to provide certain elements of Participant Data to Employer, or if no Authorizations or other permissions are required in order for Transcarent to provide such Participant Data to Employer, given its content or form, then Transcarent may make such Participant Data available to Employer, as mutually agreed upon by the Parties.

2.2.3 Use of a Secure File Hosting Service to Transfer Information about Eligible Participants. Transcarent will set up a secure file hosting service for Employer to use to transfer Eligibility Files to Transcarent. Eligibility Files will be transmitted using Secure Sockets Layer (or SSL) / Transport Layer Security (or TLS) protocols, using only strong protocols, such as the TLS 1.2 specification, and Transcarent personnel will access such Eligibility Files only using devices that are securely configured and managed by Transcarent. The secure file hosting service will be used by Transcarent and Employer, or third parties authorized by the Employer, to transfer all information about Eligible Participants, which may contain PHI, between themselves.

2.2.4 Business Associate Agreement. The set of information included in the Eligibility Files provided by Employer to Transcarent by or on behalf of the Plan comprises certain PHI. The Plan is deemed a covered entity (as that term is defined in the Privacy



Laws) providing PHI to Transcarent, which is deemed a business associate (as that term is defined in the Privacy Laws). Each Party therefore agrees to comply with the terms and conditions set forth in the BAA with respect to any PHI provided by Employer to Transcarent in the course of the Parties' performance of this Agreement.

2.2.5 SOC 2 Audit Report. Transcarent agrees that it will act with the degree of skill, care, and judgment customarily accepted as sound, quality, and professional with regard to data privacy and security and will maintain safeguards necessary to ensure the confidentiality and integrity of all data and Transcarent information technology systems. Transcarent will engage an independent CPA firm, which complies with the most current updates established by the American Institute of CPAs, to perform a SOC 2 Audit Report on an annual basis. The person(s) conducting the SOC 2 Audit Report must have the technical expertise, training and certifications to conduct such audit. The SOC 2 Audit Report will provide details of the Transcarent security controls examined by the auditor for suitability and operating effectiveness, as they relate to the Services provided to Employer for security, confidentiality and availability. Upon written request by Employer, Transcarent will make the SOC 2 Audit Report available to Employer on an annual basis. The SOC 2 Audit Report is considered the Confidential Information of Transcarent and Employer shall maintain its confidentiality pursuant to Section 7 (Confidentiality) of this Agreement, and may not share the SOC 2 Audit Report with its Representatives, other than officers, directors, and employees, without prior written consent from Transcarent. In the event the SOC 2 Audit Report identifies a material deficiency in Transcarent policies, practices, or controls, Transcarent shall remedy the same.

3. EMPLOYER OBLIGATIONS

3.1 Restrictions on Employer's Rights to Use the Services and Participant Data. Employer may not (a) remove from the Services, or otherwise modify, any proprietary rights notices associated with the products or services of Transcarent or its licensors that accompany or are used in connection with the Services; (b) make the Services available in any manner to any third party for use in such third party's business or operations; (c) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services, except to the extent such restrictions are limited by applicable law; (d) access or use (or permit third parties to access or use) the Services in order to build or support any products or services competitive with the Services; or (e) use any Participant Data received by Employer from Transcarent or otherwise processed by Employer on behalf of Transcarent, except as permitted by applicable law and one or more applicable Authorizations.

3.2 Secure Transfer of Eligibility Files and PHI. Employer, or third parties authorized by Employer to act on Employer's behalf, shall provide an Eligibility File to Transcarent on a mutually agreeable cadence during the Subscription Period in the format designated by Transcarent. The Employer, or such authorized third parties, agree to use the secure file hosting service in accordance with Section 2.2.3 (Use of a Secure File Hosting Service to Transfer Information about Eligible Participants) when transferring Eligibility Files, and to adhere to all Administrative Safeguards in place to help ensure that any PHI transferred to Transcarent remain confined to persons and entities authorized to Access such PHI. Employer, when receiving PHI from Transcarent, agrees to adhere, and cause authorized third parties to adhere, to all Administrative Safeguards in place to help ensure that PHI transferred to Employer by Transcarent remains confined to persons and entities authorized to Access such PHI. Further, Employer, when transferring PHI to Transcarent, agrees to adhere, and cause authorized third



parties to adhere, to Transcarent's instructions and guidelines concerning data encryption, including any such instructions or guidelines concerning use of an algorithmic process to transform such PHI into a form in which there is a low probability of assigning meaning to such PHI without the use of a confidential process and key.

3.3 Transcarent Property. As between Transcarent, Employer, and Participants, Transcarent owns all right, title, and interest in and to the Transcarent Property. This Agreement is not an agreement of sale, and no title, patent, copyright, trademark, trade secret, intellectual property, or other ownership rights to any Transcarent Property are assigned or otherwise transferred to Employer or any Participant pursuant to this Agreement. For the avoidance of doubt, Transcarent reserves all rights not expressly granted by this Agreement and no licenses are granted by it to any person or entity, including Employer and Participants, whether by implication, estoppel, or otherwise, except as expressly set forth in this Agreement. Employer shall not attempt to claim ownership over any Transcarent Property.

3.4 Benefit Plan Compliance. Employer is responsible for the Plan and compliance with applicable law related to the Plan. Transcarent has no duty, now or in the future, to determine whether the Plan complies with HIPAA; the Internal Revenue Code, as amended; ERISA; or the ACA, and has no duty to determine whether the Plan or the Plan design avoids ACA penalties or fees.

4. FEES AND PAYMENT

4.1 Exhibit A. In exchange for provision of the Services, Employer agrees to pay Transcarent the Fees as calculated in Exhibit A (Fees and Payment). Any amendment (including add-ons) to and/or renewal(s) of the Fees after the Effective Date shall be in the form of a service order executed by the Parties (each, a "**Service Order**"). Once executed by the Parties, a Service Order shall be subject to the terms and conditions of this Agreement. In the event of a conflict between the terms and conditions of a Service Order and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control unless the Service Order explicitly states otherwise.

4.2 Taxes. As between Transcarent and Employer, Employer is solely responsible for any Taxes assessable by any jurisdiction whatsoever arising from Participants access to and use of the Services. The Taxes, if applicable, will be separately identified on an invoice and will be payable in accordance with the applicable terms of this Agreement.

5. INFORMATIONAL MATERIALS, MARKETING MATERIALS, AND USE OF MARKS

5.1 Informational Materials for Eligible Participants; Additional Marketing Materials. Throughout the Term, Employer hereby directs Transcarent to develop and provide to Eligible Participants the Informational Materials proactively on Employer's or Plan's (as applicable), behalf. In addition to the Informational Materials, Transcarent may develop Marketing Materials for publicity purposes to inform Eligible Participants of Transcarent Services. Employer or Plan, as applicable, will confirm that appropriate permissions are in place for Transcarent to contact Eligible Participants on Employer's or Plan's (as applicable) behalf using Participant Data and alert Transcarent to any relevant permissions that have been revoked or restricted. Employer will collaborate with Transcarent in its efforts under this Section 5.1 by providing current contact information for Eligible Participants within a reasonable time, upon request; provided that Transcarent may use contact information within Eligibility Files to communicate with Eligible



Participants and Participants. The Informational Materials and Marketing Materials derive from proprietary intellectual property of Transcarent and are therefore owned by Transcarent. Once final versions of the Informational Materials and Marketing Materials are provided, Transcarent hereby grants Employer a non-exclusive license to use the Informational Materials and Marketing Materials during the Term and solely for their intended purpose(s). Employer may sublicense the Informational Materials and Marketing Materials to its Representatives that have a need to use the Informational Materials and Marketing Materials for purposes of aiding Employer in its responsibilities under this Agreement, provided that such sublicense shall restrict Employer's Representatives from modifying or incorporating the Informational Materials and Marketing Materials into the Representative's own materials, or otherwise using Transcarent's Marks, unless such Representative enters into a separate license agreement with Transcarent. The Plan receives no financial remuneration in exchange for Informational Materials provided to Eligible Participants or Marketing Materials used by Employer and/or Plan.

5.2 Use of Marks. Each Party hereby grants the other a non-exclusive, non-transferable (except as otherwise set forth in Section 12.13 (Assignment) below), limited license during the Term to use its Marks in conjunction with the Informational Materials and Marketing Materials, in each case, solely for their intended purpose(s). Further, Employer hereby grants to Transcarent a non-exclusive, non-transferable (except as otherwise set forth in Section 12.13 (Assignment) below), limited license during the Term to use Employer's Marks in a publicly available list of Transcarent's customers. Any use of a Party's Marks will be in accordance with the Mark holder's then-current trademark guidelines, as may be updated by the Mark holder from time to time. Each Party agrees to modify or correct its usage of the other Party's Marks in a timely manner upon reasonable written request of the Mark holder.

5.3 No Other Use of Marks. Except as may be expressly provided herein and as necessary to operate and perform the Services, neither Party will use the other Party's Marks for any other purpose, including in a manner that implies that the Party's products and services are affiliated with the other Party. Use of another Party's Marks on Informational Materials and Marketing Materials will in no way transfer any rights to the Informational Materials or Marketing Materials to such other Party, except to the extent the other Party retains all rights in its own Marks. Each Party agrees not to register any other Party's Marks, or Marks confusingly similar to those Marks, including, in the case of Transcarent, those Marks used to identify the Services, in the same trademark class, in any jurisdiction.

6. TERM AND TERMINATION; SUSPENSION OF SERVICES

6.1 Term. The term of this Agreement will begin on the Effective Date and expire upon the expiration date of the Subscription Period ("**Term**"), unless terminated earlier in accordance with this Section 6. This Agreement may be renewed upon execution of a renewal addendum signed by both Parties, subject to adjusted pricing.

6.2 Termination for Cause. Either Party may terminate this Agreement at any time upon written notice to the other Party in the event of a material breach of this Agreement by the other Party if such breach is not cured by the breaching Party within 30 days after receipt of written notice of such breach from the non-breaching Party.

6.3 Suspension of a Participant's Access to Services. Transcarent will have the right to suspend a Participant's access to and use of the Services, including, for the avoidance of doubt, access to and use of all elements of the Services, in the case of any breach of Sections 3



(Employer Obligations), 4 (Fees and Payment), or 7 (Confidentiality) by Employer or any third party authorized by Employer to perform activities on Employer's behalf, or if Transcarent reasonably concludes that use of the Services is in danger of causing immediate risk or harm to the Platform, Transcarent, Employer, any Provider, a Participant, any Transcarent user, Participant Data, or PHI, in which case Transcarent will determine whether the Employer should be notified of the suspension. Further, if any amount owed by Employer pursuant to this Agreement is 60 days or more past due, Transcarent may, upon five business days' prior notice, and without limiting its other rights and remedies, suspend the provision of and access to the Services by Participants until such amounts are paid in full. Transcarent will not be liable to Employer, a Participant, or to any third party for any liabilities, claims, or expenses arising from or relating to any suspension of the Services in compliance with the terms and conditions set forth in this Section 6.3.

6.4 Survival. The terms, conditions, covenants, obligations, representations, warranties, disclaimers, limitations, and restrictions set forth in this Agreement that, by their sense and context, are intended to survive the performance of this Agreement will survive the expiration or earlier termination of this Agreement. For the avoidance of doubt, any and all payment obligations that accrue to Transcarent pursuant to this Agreement prior to the effective date of its expiration or earlier termination are intended to survive. Further, the Parties intend the following Sections of this Agreement to survive the expiration or earlier termination of this Agreement, regardless of the context: 2.1.1 (Plan Documents Provided by Transcarent) (except the obligation to provide Plan Documents), 2.1.3 (Rendering of the Medical Services by Providers), 2.2.1 (General), 2.2.4 (Business Associate Agreement), 3.1 (Restrictions on Employer's Rights to Use the Services and Participant Data), 3.3 (Transcarent Property), 4 (Fees and Payment), 5.3 (No Other Use of Marks), 6.4 (Survival), 6.5 (Effect of Termination), and 7 (Confidentiality) through 12 (Additional Terms).

6.5 Effect of Termination. Upon termination or expiration of this Agreement for any reason, (a) Transcarent will not be obligated to perform or otherwise make accessible the Services after the effective date of such termination or expiration, and (b) Employer shall pay Transcarent all Fees that, pursuant to this Agreement, have accrued prior to the date of such termination or expiration, except for amounts, if any, that are the subject of a bona fide dispute expressed by Employer to Transcarent in writing.

7. CONFIDENTIALITY

7.1 Protection of Confidential Information. The Recipient will (a) not disclose, publish, release, transfer, or otherwise make available the Discloser's Confidential Information in any form to, or for the use or benefit of, any person or entity, except as permitted in Section 7.3 (Permitted or Required Disclosures), without the Discloser's written consent, and (b) secure and protect the Discloser's Confidential Information from unauthorized use or disclosure by using at least the same degree of care as the Recipient employs to avoid unauthorized use or disclosure of its own most sensitive, non-public information, but in no event less than reasonable care. Each Party will advise its personnel of the confidentiality standards imposed upon them pursuant to the terms of this Agreement. Further, each Party will have written obligations in place (either directly or indirectly through their respective employers) with all personnel to keep the Confidential Information in confidence.

7.2 Exclusions. Confidential Information does not include information that Recipient can show through tangible evidence (a) was in Recipient's possession before receipt from



Discloser; (b) is independently developed or acquired by or for Recipient without use of or reference to Discloser's Confidential Information; (c) is rightfully received by Recipient from a third party without a duty of confidentiality; or (d) is or becomes available to the public through no fault of Recipient.

7.3 Permitted or Required Disclosures. Each Recipient may disclose relevant aspects of Discloser's Confidential Information to its Representatives that are under written obligations of confidentiality at least as restrictive as those set forth in this Agreement, and to the extent that such disclosures are reasonably necessary for the performance of its duties and obligations pursuant to this Agreement or enforcement of its rights. Further, a Recipient may disclose the terms of this Agreement to a potential acquirer or investor (including its legal and financial advisors) as long as such third parties are under written obligations of confidentiality at least as restrictive as those set forth in this Agreement. Each Recipient will take reasonable measures to ensure that Discloser's Confidential Information is not disclosed or duplicated in contravention of the provisions of this Agreement by such Representatives, potential acquirers, and investors. The Parties' respective obligations will not restrict any disclosure required by law; provided, however, that (a) the Recipient shall give advance notice of such disclosure requirement to the Discloser (to the extent legally permissible) and give the Discloser reasonable opportunity to object to and contest such disclosure, including seeking a protective order or other appropriate remedy; and (b) the Recipient shall (i) take reasonable action necessary to not disclose the Discloser's Confidential Information that is not required to be disclosed to satisfy any legal requirement (including through redaction of sensitive commercial information, including key terms of this Agreement, or otherwise), (ii) shall use reasonable efforts to secure confidential treatment of any such information that is required to be disclosed, and (iii) shall maintain the confidentiality of any Confidential Information disclosed pursuant to law in all other instances.

7.4 Return or Destruction. Upon expiration or earlier termination of the Agreement, or upon written request by the Discloser, the Recipient, within seven (7) days, will, in the case of tangible objects, promptly return to the Discloser or, for all other Confidential Information, destroy all Confidential Information in its possession and provide a certificate of destruction upon request of the Discloser; provided, however, that the Recipient may retain copies of the Confidential Information as required in accordance with its or their respective legal, compliance and/or automated backup archiving practices. Notwithstanding the foregoing, the Parties acknowledge that latent data in routine back-up systems shall be subject to destruction by the Recipient in the ordinary course provided that such data remains inaccessible without use of computer forensics techniques until destroyed. The Recipient shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information.

7.5 Feedback. Transcarent has not agreed to and does not agree to treat as confidential any Feedback, and nothing in this Agreement or in the Parties' dealings arising out of or related to this Agreement will restrict Transcarent's right to use, profit from, disclose, publish, or otherwise exploit any Feedback, without compensation or other obligation to Employer, or provide Employer with any rights in the Services.

7.6 Injunctive Relief. The Parties agree that any breach of this Section 7 by the other Party may cause irreparable injury not adequately compensable with monetary damages. Accordingly, in addition to any rights otherwise available at law, in equity, or by statute, the non-breaching Party is entitled to seek injunctive and other equitable relief without the need to secure a bond.



7.7 Survival. The confidentiality obligations set forth in this Section 7 shall survive the expiration or early termination of this Agreement for a period of five (5) years thereafter.

8. REPRESENTATIONS AND WARRANTIES

8.1 Mutual Representations and Warranties. Each Party represents and warrants to the other that (a) it has duly authorized the execution, delivery, and performance of this Agreement, and such authorization is in full force and effect; and (b) it shall comply with applicable laws regarding its performance under this Agreement.

8.2 Representations, Warranties, and Additional Responsibilities by Transcarent. Transcarent represents and warrants to Employer that (a) it is the owner of the Platform and of each and every component thereof, and that it has and will maintain the full power and authority to grant the subscription license and other rights granted in this Agreement without the further consent of any third party; and (b) it requires 98point6 Physicians PC to (i) ensure Providers are licensed and credentialed in accordance with applicable law and using industry-standard practices; (ii) perform appropriate background checks of all Providers; and (iii) ensure that no Provider has been suspended, excluded, or debarred from participation in Medicare, Medicaid, or any other federal or state healthcare program.

8.3 Representations, Warranties, and Additional Responsibilities by Employer. Employer represents and warrants to Transcarent that (a) it is responsible for the design, maintenance, and legal compliance of the Plan, including but not limited to HIPAA, ERISA, and the ACA; and (b) it shall provide a complete and accurate Eligibility File and that any information, including the Eligibility File, it has given or will give Transcarent in connection with the Parties' performance of this Agreement is, to the best of the Employer's knowledge, complete and accurate.

8.4 Warranty Disclaimers. Except for the limited warranties expressly set forth in this Section 8, the Services (including the Platform and any Medical Services provided in connection therewith) are provided strictly on an "as is" and "as available" basis without warranty of any kind, express, implied, or statutory. Transcarent specifically disclaims, all other warranties whether express, implied, or statutory, including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. Without limiting the foregoing, Employer specifically acknowledges that Transcarent and its licensors make no warranty that the Services will meet Employer's or Participants' requirements or be error-free or without interruption; that all errors will be corrected; that the Services will be free of vulnerability to intrusion or attack; or that Employer's or Participants' specific requirements will be satisfied. Employer acknowledges that Transcarent does not control the transfer of information or data over Communication Systems, and that the Services may be subject to limitations, delays, and other problems inherent in the use of such Communication Systems. Transcarent will not be liable for any alteration, theft, destruction, or loss of Employer's or Participants' information, data, files, or programs as a result thereof, except to the extent such alteration, theft, destruction, or loss results from intentional misconduct on the part of Transcarent or its personnel.

9. INDEMNIFICATION

9.1 General. Each Indemnifying Party will indemnify, defend, and hold harmless the other Party's Indemnitees from and against any and all Third-Party Claims that are incurred or suffered by Indemnified Parties arising out of or resulting from (a) any breach by the Indemnifying



Party of its representations or warranties under this Agreement; (b) violation of applicable law by the Indemnifying Party; (c) an Indemnifying Party's negligence, gross negligence or fraudulent, criminal or willful and intentional misconduct in connection with the Agreement; (d) bodily injury, including death, or damage to tangible personal or real property to the extent caused by negligent or willful acts or omissions of the Indemnifying Party's personnel or agents in connection with the performance or receipt of the Services; or (e) a claim or allegation that the Services (in the case of Transcarent) when used as permitted under this Agreement, or a Party's Proprietary Rights (defined as "any and all worldwide intellectual or proprietary property owned or properly licensed by a Party, and all intellectual or proprietary property rights subsumed therein, including patent rights, copyright rights, Marks, trade secret rights, rights of publicity, rights of privacy and moral rights") infringe any patent, copyright or trademark or misappropriate any trade secret or infringe on any other property right of such third party.

9.2 Responsibility for Plan-Related Third-Party Claims, Penalties, and Failure to Comply. Notwithstanding anything to the contrary set forth in Section 9.1 (General), Employer is responsible under this Agreement for defending any and all Plan-Related Third-Party Claims against Employer or Transcarent (or Transcarent Indemnitees). Employer's obligations to defend Plan-Related Third-Party Claims under this Section 9.2 shall not affect any Transcarent obligation to indemnify Employer for losses in connection with Third-Party Claims in Section 9.1. To the extent Transcarent is not responsible for losses under this Section 9 (e.g., Eligible Participant, Participant, or government agency claims related to Plan design or Plan administration, claims resulting from Employer's breach of fiduciary duty, etc.), Employer shall indemnify, defend and hold Transcarent (and Transcarent Indemnitees) from and against (a) any Plan-Related Third-Party Claims, (b) Employer's failure to comply with Transcarent program requirements as stated in this Agreement, and (c) any penalties, taxes, judgments, or expenses assessed against Employer, Eligible Participants, Participants, or other Plan beneficiaries as a result of the Plan, the Plan design, or any decisions related thereto, and shall pay all losses incurred by Transcarent in connection therewith.

9.3 Indemnity Obligations. Indemnifying Party's indemnification obligations under this Section 9 are conditioned upon Indemnitees (a) promptly (e.g., delivered timely so as to avoid prejudicing the Indemnifying Party's obligations under Sections 9.1 and 9.2) notifying Indemnifying Party in writing of the Third-Party Claim or Plan-Related Third-Party Claim; (b) granting Indemnifying Party sole control of the defense and settlement of the Third-Party Claim or Plan-Related Third-Party Claim, provided any such settlement does not bind the Indemnitees to pay any monetary amounts or admit to any wrongdoing; and (iii) providing Indemnifying Party, at Indemnifying Party's expense, with all assistance, information and authority reasonably required for the defense and settlement of the Third-Party Claim or Plan-Related Third-Party Claim. For the avoidance of doubt, the Indemnifying Party's duty to defend is independent of its duty to indemnify.

10. LIMITATIONS ON LIABILITY

10.1 Inclusion and Exclusion of Liability. Except for (a) a Party's breach of the limitations and restrictions set forth in Section 5 (Informational Materials, Marketing Materials, and Use of Marks); (b) a Party's breach of its confidentiality obligations set forth in Section 7 (Confidentiality); (c) a Party's indemnification obligations pursuant to Section 9 (Indemnification); and (d) Employer's breach of the limitations and restrictions set forth in Sections 3.1 (Restrictions on Employer's Rights to Use the Services and Participant Data) and 3.3 (Transcarent Property), in no event shall:



(i) either Party be liable, whether under contract, warranty, indemnity, tort, statute, or other legal theory, for special, incidental, consequential, or indirect damages, including loss of business, loss of data, and the cost of procuring substitute products or services, whether or not it has been advised or is aware of the possibility of such damages; or

(ii) Transcarent be liable to Employer or to any Participant for any action or claim alleging misrepresentation, misappropriation, or infringement based upon (a) any use of the Services, or a component thereof, in a manner other than as specified by Transcarent in this Agreement; (b) any use of the Services in a combination with other services, equipment, devices, software, systems, or data not supplied by Transcarent, to the extent such action or claim would not have arisen but for such combination; or (c) any alteration, modification, or customization of the Services, or a component thereof, by any person other than Transcarent (without written authorization from Transcarent), to the extent such action or claim would not have arisen but for such alteration, modification, or customization.

10.2 Liability Cap. Transcarent will not be liable for any damages in an aggregate amount exceeding the amount actually paid and due and payable by Employer to Transcarent hereunder for the Services giving rise to such liability during the 12 months immediately preceding the accrual of such liability.

11. INSURANCE DISCLAIMERS; MEDICAL SERVICE FEES

11.1 No Provision of Medical Insurance. Neither Transcarent, Providers, nor the products and services provided by them are insurance. Neither Transcarent nor Providers are engaged in the business of insurance and this Agreement will not be deemed to be a contract for insurance. The Fees and other remuneration, if any, paid to or otherwise earned by Transcarent do not cover the rendering of the Medical Services, whether the Medical Services are deemed by a Participant or other third party to have been rendered by Transcarent or Providers. The Fees and other remuneration, if any, paid to or otherwise earned by Transcarent cover only the design, development, hosting, operation, and maintenance of the Platform made available to Participants. The fees and other remuneration, if any, paid to or otherwise earned by Providers cover only the rendering of Medical Services to Participants by such Providers. For the avoidance of doubt, the Fees and other remuneration, if any, paid by Employer to Transcarent do not cover the costs of or other expenses associated with any diagnostic tests, prescription medications, or medical devices or any specialty medical services rendered by any third party.

11.2 Medical Service Fees and Exemptions. Employer acknowledges the following concerning the costs, limitations, and exemptions for certain classes of Participants that may receive Medical Services via the Platform:

11.2.1 Participants without Qualified HSAs. For Participants that Employer indicates do not have a HDHP that qualifies for HSA contributions, the cost of receiving the Medical Services is included in the Fees, which will be allocated by Transcarent to Providers as necessary or advisable. Medical Services will be limited to 36 visits per non-HSA Participant per calendar year. If a non-HSA Participant reaches the limit of 36 visits, they will be charged a per-visit fee for Medical Services of \$5 per visit in excess of 36 visits. The per-visit fee is subject to annual review and adjustments, including potential waiver in accordance with applicable law.



11.2.2 Qualified HSA Participants. For Participants that Employer indicates do have a qualified HDHP/HSA, the cost of receiving the Medical Services is the FMV of the Medical Services. Qualified HSA Participants will be charged a per-visit fee for Medical Services based on FMV. FMV is currently calculated at \$5 per visit, subject to periodic review and adjustments, including potential waiver in accordance with applicable law. However, if Employer provides an HDHP that is not coupled with an HSA, the FMV per visit fee will not apply and the Participants may receive the Medical Services in accordance with Section 11.2.1 (Participants without Qualified HSAs).

12. ADDITIONAL TERMS

12.1 Insurance.

12.1.1 Transcarent Insurance. Transcarent will at all times during the Term of this Agreement maintain, and require Transcarent Physicians PC to maintain, the following policies of insurance: Commercial General Liability, Commercial Automobile Liability, Workers Compensation, Technology Errors and Omission Liability and Cyber Liability (such policies shall cover common law claims, breach notification expenses, identity theft protection and credit monitoring, data theft, and, where insurable by law, coverage related to fines and penalties associated with the violation of state or federal information privacy and security laws and regulations), and Umbrella Excess Liability. Transcarent shall maintain the appropriate scope of coverage and policy limits consistent with industry standards and best practices for the relevant type of Services Transcarent provides, in an amount sufficient to fulfill its obligations under this Agreement. Further, Transcarent shall ensure that Providers are contractually obligated to maintain professional liability insurance with limits and coverage that are consistent with the professional liability limits and coverage generally obtained by similar physicians or other medical providers, as applicable, in the state in which such Provider renders Medical Services.

12.1.2 Employer Insurance. Employer will at all times during the Term of this Agreement, at its own expense, maintain the following policies of insurance or maintain sufficient reserves to self-insure for: Commercial General Liability, Worker's Compensation and Employer's Liability Insurance, Commercial Automobile Liability, and Umbrella Excess Liability coverage. Employer shall maintain the appropriate scope of coverage and policy limits or maintain sufficient reserves to self-insure, consistent with industry standards and best practices for the relevant type and size of Employer, in an amount sufficient to fulfill its obligations under this Agreement.

12.1.3 As applicable, each Party shall ensure that all insurance policies required pursuant to this Section 12.1:

(i) will not be canceled, non-renewed or the limits of coverage materially reduced without at least 30 days' prior written notice to the other Party, unless such policy is to be replaced by coverage of like coverage limits, kind and substance; and

(ii) be issued by insurance companies with a Best's Rating of no less than A-VII.



12.1.4 Upon request, each Party will furnish the other Party with a certificate of insurance evidencing the above coverage. This Section 12.1 shall not be construed in any manner as waiving, restricting, or limiting the liability of either Party for any obligations imposed under this Agreement (including but not limited to, any provisions requiring a Party hereto to indemnify, defend, and hold the other harmless under this Agreement).

12.2 Independent Contractor. Nothing in this Agreement will make Employer, Transcarent, or Providers partners, co-venturers, or otherwise associated in or with the business of the other. Transcarent and Providers are and shall always remain independent contractors with respect to Employer. No Parties shall be liable for any debts, accounts, obligations, or other liabilities of another Party, its employees, or other agents. This Agreement does not authorize any Party to incur debts nor other obligations of any kind on the part of or as agent for the other except as may be specifically authorized in writing for a particular instance or an authorized series of instances.

12.3 Notices. All notices required hereunder shall be in writing and shall be delivered (a) by email; or (b) by certified mail, postage prepaid, return receipt requested; or (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Notice by email shall be sent to the email addresses set forth in this Section 12.3, and notice delivered by certified mail or courier should be sent to the addresses set forth in the introductory paragraph of this Agreement.

Notice Email for Employer: dvigness@yellowstonecountymt.gov

Notice Email for Transcarent: legal@transcarent.com

Notice given pursuant to this Section 12.3 shall be deemed received (a) upon receipt of a reply email sent to the email address for the sender set forth above, other than an automated response and provided that, in the subject line of the email, the sender includes the following text "LEGAL – RESPONSE REQUIRED"; or (b) two business days after sending via certified or registered mail; or (c) one business day after deposit with an overnight courier service. A Party may change its address for the purpose of this Agreement by giving the other Party written notice of its new address pursuant to the terms and conditions of this Section 12.3.

12.4 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to any choice of law statute, rule, or precedent that would apply the law of any other jurisdiction.

12.5 Jurisdiction; Venue. Each Party irrevocably agrees to bring any legal action, suit, or other proceeding in any way arising out of this Agreement solely and exclusively in the state and federal courts located in Delaware, and each Party irrevocably accepts and submits to the sole and exclusive jurisdiction of such courts, generally and unconditionally, with respect to any action, suit, or proceeding brought by it or against it by the other Party.

12.6 Entire Agreement. This Agreement, together with the Exhibits, constitutes the complete and integrated agreement between the Parties concerning the subject matter hereof. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of any exhibit, the terms and conditions of the Agreement shall control unless the exhibit explicitly states otherwise, provided that the terms and conditions of the BAA will govern and control over the Agreement.



12.7 Amendment. Except as otherwise expressly provided herein, this Agreement may not be amended or supplemented, nor any of the provisions hereof waived, except by a written instrument signed by each of the Parties.

12.8 Contract Modifications for Legal Events. If (a) the Parties agree that this Agreement or any material provision of this Agreement is likely to violate any applicable local, state, or federal law, rule, or regulation, either on its face or as a result of judicial, administrative, or a regulatory agency interpretation; or (b) in the opinion of legal counsel selected mutually between the Parties, this Agreement or any material provision of this Agreement is likely to materially violate any such law, rule, or regulation, then the Parties shall immediately enter into good faith negotiations to amend this Agreement so that it will not be likely to materially violate any such law, rule, or regulation in the future and otherwise maintain as closely as possible the relative legal and economic positions of the Parties. If a court of competent jurisdiction or regulatory agency compels or requires a Party hereto to refrain from performing this Agreement or any provision hereof, or a Party's performance hereunder directly violates any court or regulatory or administrative body order directed at such Party, then, to the extent necessary to comply with such court or regulatory or administrative body order, this Agreement or the applicable provision hereof shall be deemed suspended. In no event shall such suspension be construed to relieve either Party's obligation under this Section 12.8 and the Parties will immediately commence good faith negotiations to amend this Agreement so that it will not materially violate the applicable order and otherwise maintain, as closely as possible, the relative legal and economic positions of the Parties.

12.9 Waiver. The failure of any Party to give notice of non-performance, breach, or termination, or to otherwise enforce any rights hereunder, shall not constitute a waiver of any terms or conditions of this Agreement. Further, a waiver by any Party of any requirement of this Agreement shall not be construed as a continuing waiver, a waiver of any other requirement, or a waiver of any right or remedy otherwise available.

12.10 Interpretation; Language. Each Party acknowledges that, in accepting this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that it has read and understood all of the terms and conditions set forth in this Agreement. As such, no ambiguity found to exist in the language of this Agreement will be construed against either Party based upon a claim that the other Party drafted the ambiguous language. Also, this Agreement is in the English language, which language will be controlling, even if interpretations of this Agreement in other languages are made. The titles, captions, and headings contained in this Agreement are inserted only as a matter of convenience or for reference and will not be used to construe or interpret this Agreement. The word "or" is not exclusive, and the words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Whenever required by context, a singular term will include the plural, the plural term will include the singular, and the gender of any pronoun will include all genders.

12.11 Severability. If any provision of this Agreement is adjudged to be invalid, void, or unenforceable, the Parties agree that the remaining provisions of this Agreement shall not be affected thereby, that the provision in question may be replaced by the lawful provision that most nearly embodies the original intention of the Parties, and that this Agreement shall in any event otherwise remain valid and enforceable.



12.12 Subcontracting and Delegation. In recognition of the Parties' status as independent contractors, each Party will be responsible for the means and manner in which they perform their respective obligations under this Agreement and may subcontract or delegate the performance of their respective obligations and receive the rights hereunder, including performance or receipt of any portion of the Services by contractors authorized to act on their behalf, in each case, without the consent of the other Party. Each Party agrees that it shall be responsible and liable for the performance of third parties working on its behalf, and will require such third parties to comply with applicable terms and conditions of this Agreement.

12.13 Assignment. Subject to the exceptions listed herein, neither this Agreement nor any rights granted by this Agreement may be assigned or otherwise transferred by any Party, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the other Party, provided that such consent will not be unreasonably withheld, delayed, or conditioned; and provided, further, that no consent shall be required for an assignment or transfer to a purchaser of all or substantially all assets related to this Agreement, or to a third party participating in a merger, acquisition, sale of assets, or other corporate reorganization in which the assigning Party is participating. Any assignment in violation of the foregoing will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

12.14 Force Majeure; Performance Exclusion. In no event shall either Party be deemed in default hereunder based on delay in, or failure of, performance (other than the payment of money) if caused by a Force Majeure Event. If the Force Majeure Event continues for sixty (60) or more days or occurs for more than 60 days in any three-month period, then either Party is entitled to terminate this Agreement by giving written notice to the other Party. The termination right offered by this Section 12.14 is the exclusive remedy available with respect to the delays described in this Section.

12.15 Third-Party Beneficiaries. This Agreement is for the benefit of the Parties. Nothing in this Agreement confers on any person or entity other than the Parties any rights, remedies, obligations, or liabilities. No third party shall be considered a third-party beneficiary under this Agreement.

12.16 Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument, with the same effect as though such signatures were on the same instrument. This Agreement shall be effective upon full execution by pdf or original or electronic signature (such as DocuSign), and such signature shall be deemed to be and shall be as effective as an original signature.

[Signature Page Follows]



In witness whereof, and with the intent to be bound hereby, the Parties have caused this Agreement to be executed by their duly authorized officers or representatives as of the Effective Date.

Transcarent, LLC

Yellowstone County

By: DocuSigned by:
Erica Davila
D06D00B4F6AF497...

By: _____

Name: Erica Davila

Name: _____

Title: General Counsel

Title: _____

Date: 4/19/2024

Date: _____



**EXHIBIT A
FEES AND PAYMENT**

1. **DEFINITIONS.** The following definitions shall apply to this Exhibit A. Any capitalized terms used in this Exhibit A but not defined herein shall have the meaning ascribed to them in Section 1 (Definitions) of the Agreement.
 - a. “**Subscription Commencement Date**” means July 1, 2024.
 - b. “**Subscription Period**” shall commence on the Subscription Commencement Date and expire after 12 months.

2. **FEES CALCULATION.** Fees will be calculated pursuant to the following table:

Primary Care Fees					
A	B	C	D	E	F
Subscription Period	Estimated Number of Eligible Participants	Fees per Eligible Participants per month	Fees per month (B x C)	Estimated Annual Fees (D x 12 months)	Initial Invoice Date
12 months 7/1/2024 – 6/30/2025	1270	\$1.20	\$1,524	\$18,288	8/1/2024

3. **CHANGES IN TOTAL NUMBER OF ELIGIBLE PARTICIPANTS.** The Fees above are based upon the total number of Eligible Participants as of the Effective Date. Employer shall send Eligibility Files to Transcarent on a mutually agreeable cadence. The total number of Eligible Participants may be increased up to a maximum of 10% before a fee is assessed. After the total number of Eligible Participants increases above 10%, Employer will be invoiced a fee for the total amount of additional Eligible Participants at Employer's current per Eligible Participant per month rate times the remaining months in the current invoicing cycle (the “**Increase Fee**”). Invoices for subsequent invoicing cycles will account for the new total number of Eligible Participants. No further Increase Fees shall be invoiced until the new total number of Eligible Participants increases by more than 10% again. Further, this Exhibit A includes an estimate for Eligible Participants. If the number of Eligible Participants increases after execution of the Agreement, Transcarent reserves the right to invoice Employer based upon the number of Eligible Participants listed on the Eligibility File as of the Subscription Commencement Date.
4. **PAYMENT TERMS.** For the first invoicing cycle of the Subscription Period, Fees are due upon execution of the Agreement, net 30. Fees for each successive invoicing cycle of the Subscription Period shall be due on the anniversary of the Subscription Commencement Date, net 30. Any Increase Fees shall be invoiced upon each notification of an increase above 10% of the total number of Eligible Participants. Late payments by Employer are subject to a service charge of the lesser of 1.5% per month or the maximum legal rate, determined and compounded. Billing contact information is as follows:

Name: Dwight Vigness, CHRO
Email: dvigness@yellowstonecounty.mt.gov
Phone: (406) 256-2705
5. **RENEWAL FEES.** Fees in this Exhibit A are subject to change upon renewal.



EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**BAA**”) is entered into by and between Transcarent, LLC (“**Business Associate**”) and Employer (“**Plan Sponsor**”) for and on behalf of the Plan (“**Covered Entity**”) to permit Business Associate to create, receive, maintain, and transmit PHI (as defined in the Agreement executed between Business Associate and Plan Sponsor (the “**Subscription Agreement**”)) transferred by Plan Sponsor to Business Associate for or on behalf of Covered Entity, so that Business Associate may render the Services (as defined in the Subscription Agreement). This BAA shall be effective as of the Effective Date of the Subscription Agreement and is incorporated therein by reference.

1. DEFINITIONS

For purposes of this BAA, capitalized terms used but not otherwise defined in this BAA have the meaning ascribed to such terms in the Subscription Agreement or in the final regulations relating to privacy and security of individually identifiable health information at 45 CFR Parts 160, 162, and 164 implementing HIPAA and the HITECH Act. For purposes of this BAA only (and not the Subscription Agreement), the following terms have the meanings set forth in this Section 1:

“**Breach Notification Rule**” means the final regulatory provisions set forth at 45 CFR Parts 160 and 164, Subparts A and D.

“**Business Associate**” has the meaning set forth in the first paragraph of this BAA.

“**Compliance Date**” means the later of (a) the date that compliance is required under the relevant provision of the HIPAA Rules, and (b) the date this BAA takes effect between the Parties.

“**Covered Entity**” has the meaning set forth in the first paragraph of this BAA.

“**Electronic Protected Health Information**” or “**ePHI**” means electronic PHI, as defined in 45 CFR § 160.103, but limited to the ePHI created, received, maintained, or transmitted by Business Associate for or on behalf of Covered Entity pursuant to the Subscription Agreement.

“**Individual**” has the meaning ascribed to that term under HIPAA, as well as a person who qualifies as a personal representative in accordance with HIPAA, but will be limited to persons who are Participants in, or Eligible Participants seeking to become enrolled in, or were Participants previously enrolled in a Plan.

“**Internal Material**” means Business Associate’s documented internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI created, received, maintained, or transmitted by Business Associate for or on behalf of Covered Entity.

“**Plan Sponsor**” has the meaning set forth in the first paragraph of this BAA.

“**Privacy Rule**” means final regulatory provisions set forth at 45 CFR Parts 160 and 164, Subparts A and E.

“**Security Rule**” means final regulatory provisions set forth at 45 CFR Parts 160 and 164, Subparts A and C.



“**Subscription Agreement**” has the meaning set forth in the first paragraph of this BAA.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Use of PHI. Business Associate agrees not to use or disclose PHI other than as necessary to perform the Services, as permitted or required by this BAA, or as Required by Law.

2.2 Safeguards; Compliance with the Security Rule. Business Associate agrees (a) to use appropriate safeguards to (i) prevent use or disclosure of PHI other than as permitted by this BAA and (ii) appropriately protect the confidentiality, integrity, and availability of PHI; and (b) to comply, where applicable, with the Security Rule with respect to ePHI.

2.3 Reporting Unauthorized Use or Disclosure. Business Associate agrees to report to Covered Entity any use or disclosure of PHI that is not permitted by this BAA, including any successful Security Incident and any Breach of Unsecured PHI. Any such report shall be made without unreasonable delay, but in no event beyond 30 calendar days after Business Associate discovers such use or disclosure, unless law enforcement requests a delay in such notice as permitted under 45 CFR § 164.412. Following notice to Covered Entity of any Breach of Unsecured PHI, Business Associate will provide information required by 45 CFR § 164.404(c), if available, that would permit Covered Entity to comply with its notice obligations. Business Associate is under no other obligation to make any report of a Breach of Unsecured PHI, including to any individual, state, federal, or other government agency or attorney general, or the media on behalf of Covered Entity.

2.4 Unsuccessful Security Incidents. Covered Entity and Business Associate acknowledge and agree that unsuccessful Security Incidents include but are not limited to: (a) unsuccessful attempts to penetrate computer networks or assets maintained by Business Associate; (b) immaterial incidents such as “pinging” or “denial of services” attacks, port scans, and unsuccessful log-on attempts; and (c) any combination of the foregoing, as long as no such incident results in unauthorized access, use, or disclosure of PHI. This Section 2.4 hereby constitutes notice to Covered Entity, and no further notification is required regarding unsuccessful Security Incidents.

2.5 Compliance by Subcontractors. Business Associate and Covered Entity each agree to ensure that any of their respective Subcontractors that create, receive, maintain or transmit PHI for or on behalf of Business Associate or Covered Entity agree in writing to comply with the Security Rule and substantially similar restrictions and conditions to those that apply through this BAA with respect to such PHI or ePHI.

2.6 Requests by the Secretary. Upon request by the Secretary, Business Associate agrees to make available to the Secretary Business Associate’s Internal Material for use by the Secretary in determining whether Covered Entity or Business Associate is in compliance with HIPAA.

2.7 Documentation of Disclosures. Business Associate agrees to document any disclosures of PHI as required under 45 CFR § 164.528 and to provide to Covered Entity, within 30 calendar days after receipt of a written request from Covered Entity, information related to such disclosures as is necessary for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.



2.8 Designated Record Set. The Services provided by Business Associate will not require the creation or maintenance of a Designated Record Set in providing the Services. If the scope of the Services changes in the future as documented in amendments or updates to the Subscription Agreement and Business Associate begins creating or maintaining a Designated Record Set, Business Associate will comply with the requirements to provide PHI to Covered Entity in response to a request under 45 CFR § 164.524 and incorporate any amendments required under 45 CFR § 164.526.

2.9 Compliance with the Privacy Rule. To the extent that Business Associate has agreed to carry out any of Covered Entity's obligations under the Privacy Rule in the Subscription Agreement, Business Associate will comply with the requirements of the Privacy Rule that would apply to Covered Entity in the performance of such obligations.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 Performance of Services. Except as otherwise permitted or limited by this BAA, Business Associate may use or disclose PHI to perform the Services to or on behalf of Covered Entity, provided that such use or disclosure would not violate the HIPAA if made by Covered Entity.

3.2 Use and Disclosure for Management and Administration; Legal Responsibilities. Business Associate may use or disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that for disclosures (a) such disclosures are Required by Law, or (b) Business Associate obtains reasonable assurances from the recipient of the PHI that: (i) the PHI will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the recipient; and (ii) the recipient will notify Business Associate of any instances of which the recipient is aware in which the confidentiality of the PHI has been breached. Any disclosure of PHI by Business Associate under this provision will not create a Subcontractor relationship with the entity to which the disclosure is made and Business Associate will not be required to obtain a business associate agreement with such entity.

3.3 Permitted by HIPAA. Business Associate may disclose PHI for any purpose described in 45 CFR § 164.512 and to report violations of law to state and federal authorities pursuant to 45 CFR § 164.502(j).

4. OBLIGATIONS OF COVERED ENTITY

4.1 Disclosures Generally. Except as otherwise provided in this BAA, the Covered Entity will not request that Business Associate use or disclose PHI in any manner that would not be permissible under HIPAA or the HITECH Act if made by the Covered Entity.

4.2 Disclosures to Covered Entity or Third Parties. To the extent Covered Entity requests that Business Associate disclose PHI either to Covered Entity or to a third-party business associate acting for the Covered Entity, Covered Entity represents that:

- i. It will only request PHI for the purposes of Treatment, Payment, or Health Care Operations, or another permitted purpose under the Privacy Rule;
- ii. The information requested is the minimum necessary to achieve the purpose of the disclosure; and



- iii. It will only share PHI with third parties, or request Business Associate to share PHI with third parties, with whom Covered Entity has executed a business associate agreement.

4.3 Disclosure to Plan Sponsor. To the extent Covered Entity requests that Business Associate disclose PHI to the Plan Sponsor, Covered Entity and Plan Sponsor each represent and warrant that:

- i. The PHI will only be used for one of the following purposes:
 - a) Plan Administrative functions, as defined by the Privacy Rule, and that the Plan Sponsor has executed the required amendment and certification allowing the disclosure, as set out in the Privacy Rule;
 - b) Enrollment functions, provided the information to be disclosed is limited to enrollment and disenrollment information; or
 - c) To amend, modify, or terminate the Plan, or to obtain premium bids to provide health insurance coverage under the Plan, provided the information to be disclosed is limited to Summary Health Information as defined in the Privacy Rule; and
- ii. The PHI requested is the minimum necessary to achieve the purpose of the disclosure.

4.4 Existing Restrictions and Limitations. Covered Entity shall notify Business Associate of any restrictions or limitations in the Covered Entity's Notice of Privacy Practices, to the extent such restrictions and limitations may affect Business Associate's use or disclosure of PHI.

4.5 Changes in Permissions. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission granted by any Individual to use or disclose PHI, to the extent such changes or revocations may affect Business Associate's use or disclosure of PHI.

4.6 Other Restrictions. Covered Entity shall notify Business Associate of any: (a) restrictions on the use or disclosure of PHI; or (b) requests for confidential communications that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent such restrictions may affect Business Associate's use or disclosure of PHI.

4.7 Contents of Notice. All notifications to Business Associate pursuant to this Section 4 shall include such detail as Business Associate reasonably requires in order to honor the limitations, restrictions, or requests for confidential communications.

5. TERM AND TERMINATION

5.1 Term. This BAA will terminate on the earlier of (a) the date on which the Subscription Agreement terminates, or (b) the date of termination of this BAA for cause or otherwise.

5.2 Termination for Cause. Upon a Party's knowledge of a breach of a material term of this BAA by the other Party, the non-breaching Party shall notify the breaching Party of such breach and (a) provide an opportunity for the breaching Party to cure the breach and, if the breaching Party does not cure the breach within 30 days after the non-breaching Party gives



notice, terminate this BAA; or (b) immediately terminate this BAA if the breaching Party has breached a material term of this BAA and cure is not possible.

5.3 Termination for Legal Events. If Business Associate determines that it is not reasonably able to (a) comply with any final new or amended provision of HIPAA, or (b) accommodate any restrictions or limitations to which Covered Entity has agreed pursuant to Section 4 (Obligations of Covered Entity) of this BAA, Business Associate may terminate this BAA (and the Subscription Agreement) upon notice to Covered Entity.

5.4 Effect of Termination. Business Associate shall extend the protections of this BAA to PHI for so long as Business Associate retains such PHI. The obligations of Covered Entity set forth in Section 4 above will survive the expiration or earlier termination of this BAA. The Parties acknowledge and agree that it is not feasible for Business Associate to return or destroy PHI upon expiration or earlier termination of this BAA or the Subscription Agreement.

6. ADDITIONAL TERMS

6.1 Amendment. Except as otherwise expressly provided herein, this BAA may not be amended or supplemented, nor any of the provisions hereof waived, except by a written instrument signed by Business Associate and Covered Entity. The Parties agree to negotiate in good faith to amend this BAA from time to time as is necessary for Business Associate or Covered Entity to comply with any new requirements of HIPAA and the HITECH Act.

6.2 Notice. All notices required by this BAA shall be in writing and delivered in accordance with the terms and conditions set forth in Section 12.3 (Notices) of the Subscription Agreement.

6.3 Choice of Law. This BAA will be governed by and construed in accordance with the governing law provisions of Section 12.4 (Choice of Law) of the Subscription Agreement, subject to applicable federal law.

6.4 Jurisdiction; Venue. Business Associate and Covered Entity agree that jurisdiction and venue will be as set forth in Section 12.5 (Jurisdiction; Venue) of the Subscription Agreement.

6.5 Waiver. The failure of Business Associate or Covered Entity to give notice of non-performance, breach, or termination, or to otherwise enforce any rights set forth in this BAA, will not constitute a waiver of any terms or conditions of this BAA. Further, a waiver by Business Associate or Covered Entity of any requirement of this BAA shall not be construed as a continuing waiver, a waiver of any other requirement, or a waiver of any right or remedy otherwise available.

6.6 Interpretation. A reference in this BAA to a section in HIPAA means the section as in effect or amended if such amendment is final and the Compliance Date for such amendment has passed. If Business Associate or Covered Entity determines that there is any ambiguity in this BAA, they will discuss the provision(s) in question and will attempt, in good faith, to resolve the ambiguity in a manner that permits Business Associate or Covered Entity to comply with HIPAA and that permits Business Associate to comply with the terms of this BAA and to render the Services.

6.7 Severability. If any provision of this BAA is adjudged to be invalid, void, or unenforceable, Business Associate and Covered Entity agree that the remaining provisions of this



BAA shall not be affected thereby, that the provision in question may be replaced by the lawful provision that most nearly embodies their original intention, and that this BAA shall in any event otherwise remain valid and enforceable.

6.8 Assignment. Subject to the exceptions listed herein, neither this BAA nor any rights granted by this BAA may be assigned or otherwise transferred by Business Associate or Covered Entity, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the other, provided that such consent will not be unreasonably withheld, delayed, or conditioned; provided, further, that no consent shall be required for an assignment or transfer to a purchaser of all or substantially all assets related to the Subscription Agreement, or a third party participating in a merger, acquisition, sale of assets, or other corporate reorganization in which the assigning party is participating. Any assignment in violation of the foregoing will be null and void. Subject to the foregoing, this BAA will be binding upon and will inure to the benefit of Business Associate and Covered Entity and their respective successors and assigns.

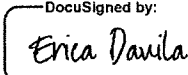
6.9 Third-Party Beneficiaries. This BAA is for the benefit of Business Associate and Covered Entity. Nothing in this BAA confers on any person or entity other than Business Associate and Covered Entity any rights, remedies, obligations, or liabilities. No third party shall be considered a third-party beneficiary under this BAA.

6.10 Counterparts and Electronic Signatures. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument, with the same effect as though such signatures were on the same instrument. This BAA shall be effective upon full execution by pdf or original or electronic signature (such as DocuSign), and such signature shall be deemed to be and shall be as effective as an original signature.

In witness whereof, and with the intent to be bound hereby, the Parties have caused this BAA to be executed by their duly authorized officers or representatives as of the Effective Date.

Transcarent, LLC

Yellowstone County

By: 
DocuSigned by:
Erica Davila
D06D00B4F6AF497...

By: _____

Name: Erica Davila

Name: _____

Title: General Counsel

Title: _____

Date: 4/19/2024

Date: _____



**EXHIBIT C
FORM OF SCOPE OF WORK**

SCOPE OF WORK [##] to SUBSCRIPTION AGREEMENT

This Scope of Work [##] (“**SOW**”) is considered a Scope of Work as defined in that certain Subscription Agreement dated [ENTER EFFECTIVE DATE], as amended from time to time (the “**Agreement**”), executed by and between Transcarent, LLC (“**Transcarent**”) and Yellowstone County (“**Employer**”). This SOW is subject to and governed by the terms and conditions of the Agreement. Any capitalized terms used but not defined in this SOW shall have the meaning set forth in the Agreement. The Parties agree to perform this SOW in accordance with the following terms:

1. **SOW Summary Description.** [ENTER SUMMARY OF SOW PURPOSE (e.g. The Parties desire to develop [_____] for the purpose of achieving [_____], etc.)]

2. **Roles and Responsibilities.** Each Party agrees to perform its respective roles and responsibilities under this SOW as follows: [ENTER HIGH LEVEL DESCRIPTION/NAME OF THE ROLE/RESPONSIBILITY OF EACH PARTY. DETAILED SPECS SHOULD BE IDENTIFIED IN SECTION 3 BELOW]

NO.	ITEM DESCRIPTION	RESPONSIBLE PARTY / PARTIES	DELIVERABLE / MILESTONE	DUE DATE (MM/DD/YEAR)
A.				
B.				
C.				

3. **Specifications.** [ENTER ANY REQUIRED SPECS FOR ITEMS LISTED ABOVE (note – not all items may require specs)]
 - a. **ITEM [#]:** [ENTER SPECS].
 - b. **ITEM [#]:** [ENTER SPECS].
 - c. **ITEM [#]:** [ENTER SPECS].

4. **Fees.** Employer agrees to pay Transcarent for development and maintenance of the product items under this SOW as outlined below. All fees are due net 30 from receipt of an invoice.



Fees			
Fee Description	Fee Amount	Invoice Frequency	Notes
ITEM [#] [DESCRIPTION]	[\$#.###]	[One-time upon execution of SOW]	
ITEM [#] [DESCRIPTION]	[\$#.###]	[One-time on {DATE}]	
ITEM [#] [DESCRIPTION]	[\$#.###]	[Annual on {DATE}]	

- Miscellaneous.** This SOW, together with the Agreement and any other documents and instruments referred to herein, constitutes the final and complete expression of the Parties with respect to the subject matter hereof. This SOW may not be amended except by a written instrument duly executed and delivered by each of the Parties. In the event of any inconsistency or conflict between the terms and conditions of this SOW and the terms and conditions of the Agreement, the terms and conditions of Agreement shall control unless otherwise stated in this SOW. This SOW may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument, with the same effect as though such signatures were on the same instrument. This SOW shall be effective upon full execution by original or electronic signature (such as DocuSign), and such signature shall be deemed to be and shall be as effective as an original signature.
- Term; Termination.** This SOW shall expire on the earlier of (check applicable box): the expiration or termination date of the Agreement or [INSERT DATE]. For purposes of this SOW, any reference to "Agreement" in Section 6 (Term and Termination; Suspension of Services) of the Agreement shall be deemed to refer to a Scope of Work, except Section 6.1 (Term) if the Parties agree to a different expiration date for this SOW than the Agreement.

The Parties, intending to be legally bound, have signed this SOW as of the date of their signatures below.

Transcarent, LLC

Yellowstone County

By: **EXHIBIT: DO NOT SIGN**

By: **EXHIBIT: DO NOT SIGN**

Name:

Name:

Title:

Title:

Date:

Date: