

YOU DEFINE WELLNESS PROGRAM PARTICIPATING PROVIDER AGREEMENT

THIS PARTICIPATING PROVIDER AGREEMENT (“Agreement”) is by and between O’Malley & Associates, LLC, doing business as You Define Wellness (“YDW”) and Participating Provider (“Participating Provider”) pursuant to an online application at www.YouDefineWellness.com submitted by Participating Provider to join YDW’s network as of the date of acceptance by YDW.

Recitals

WHEREAS, YDW is an organization that provides certain employer subsidized corporate or individual wellness programs to enrollees (“Subscribers”) through a network of participating providers. These programs are known in the market as the Employee Wellness Benefit Plan (“EWBP”), Healthy Living Savings Card (“HLSC”), and Wellness Talks. Variations and combinations of these programs may also be available. Subscribers are entitled to a package of wellness benefits at a reasonable cost consistent with an appropriate quality of care; and

WHEREAS, Participating Provider, and all practitioners employed by or affiliated with Participating Provider, are duly licensed or certified to practice within their operating states and desires to contract with YDW to provide Covered Services to Subscribers as part of YDW’s network; and

WHEREAS, Participating Provider understands this Agreement pertains to their business in its entirety including employees, partners, and affiliated contractors; and

WHEREAS, YDW desires to contract with Participating Provider for inclusion in the YDW network of Participating Providers under the terms herein contained;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties to this Agreement agree as follows:

ARTICLE I

PARTICIPATING PROVIDER FEES AND APPOINTMENT

- 1.1 **Appointment Fee.** An appointment fee not to exceed \$500 per physical location shall be paid by Participating Provider at time of application to YDW. The amount of Participating Provider’s appointment fee is assessed per independent business and physical location, not per licensed or credentialed staff.
- 1.2 **Network and Marketing Fees.** There are no monthly or annual network or marketing fees for being a Participating Provider.
- 1.3 **Appointment Process.**
 - A. Participating Provider shall ensure that he/she, and all practitioners employed by or affiliated with Participating Provider who treat Subscribers, is duly licensed to practice in all applicable jurisdictions, without restriction, with no history of revocation or suspension.
 - B. Participating Provider authorizes YDW to conduct periodic verification of Participating Provider’s status with regard to licensure, insurance, and/or experience. Participating Provider understands and acknowledges that in providing Services to Subscribers, he/she must satisfy YDW’s credentialing standards, and that YDW has the right to accept or reject any Provider regardless of the Provider’s affiliation, membership or relationship with any other Participating Providers.

ARTICLE II

PARTICIPATING PROVIDER RESPONSIBILITIES

- 2.1 **Offerings.** Participating Provider shall establish services of their choosing and in accordance with accepted standards of practice for YDW’s e-commerce platform to include services under the EWBP, HLSC, and/or Wellness Talks catalog. Participating Provider shall provide Covered Services to Subscribers in the same manner in which he/she provides such services to all other individuals treated by Participating Provider.

- A. Covered Services will be performed in Participating Provider's established business location or public location. At no time shall Covered Services be provided in a private residence without first informing YDW. Violation of this Section may result in immediate termination as a Participating Provider.

2.2 **EWBP Session Fees.** On an opt-in basis, Participating Provider shall charge EWBP Subscribers a Session Fee for Covered Services as indicated on their provider profile at www.YouDefineWellness.com. Participating Provider shall not charge Subscriber an additional amount above the Session Fee plus YDW Reimbursement for Covered Services or as otherwise indicated herein.

- A. **Verification of Eligibility.** Participating Providers shall verify the EWBP Subscriber status prior to the rendition of Covered Services. Failure to verify eligibility may result in nonpayment of claims by YDW if Subscriber does not have an activated pre-paid session available. YDW shall not retroactively terminate Subscribers.

- B. **Non-Covered Services.** Participating Provider may, at their discretion, apply the YDW Reimbursement for Covered Services benefit to the price of another service not otherwise listed and the Subscriber shall be financially responsible for the difference in cost between the covered benefit and the upgraded benefit.

- C. **YDW Reimbursement for Covered Services Submissions.** Participating Provider shall submit a request for the EWBP YDW Reimbursement for Covered Services to YDW subject as follows:

- i. Participating Provider shall use YDW-approved reimbursement forms and/or systems. Participating Provider shall use best efforts to submit requests for reimbursement within thirty (30) days following the date of service, but in no event later than ninety (90) days following the date of service. Participating Provider is on notice and hereby acknowledges that, requests for reimbursement submitted more than ninety (90) days following the date of service, YDW may deny payment for failure to meet the timely filing requirements.

- ii. YDW will pay Participating Provider for Covered Services in accordance with the Reimbursement Schedule attached as Exhibit A. YDW shall pay Participating Provider for clean submissions within two (2) business days of a said submission. A clean submission does not require additional information and that was submitted in accordance with YDW's requirements. Participating Provider acknowledges that, upon receipt of the reimbursement, Participating Provider is obligated to review the statement to identify discrepancies in the reimbursement paid by YDW. Participating Provider may appeal any dispute regarding the submission, processing or payment of a reimbursement, by submitting a written appeal to YDW, within ninety (90) days after the Participating Provider's receipt of a reimbursement.

- iii. Participating Provider acknowledges and agrees that YDW is in no manner responsible for payment of all or any part of the reimbursement for Non-Covered Services rendered to a Subscriber by Participating Provider, except that, with respect to upgraded services by a Subscriber, YDW will pay Participating Provider the amount payable for Covered Services in Exhibit A and Participating Provider will have the responsibility to collect the remaining charges from the Subscriber. Except as provided in the foregoing sentence, payment for Non-Covered Services rendered to a Subscriber is the sole responsibility of the Subscriber.

- iv. With respect to Covered Services, Participating Provider hereby agrees that in the event of non-payment by YDW due to Participating Provider's failure to file a request for reimbursement in a timely manner, Participating Provider shall not bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any recourse against any Subscriber (or persons acting on a Subscriber's behalf) for Covered Services provided pursuant to this Agreement. Participating Provider further agrees that this Section shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall apply to all Covered Services rendered prior to the termination of the Agreement.

2.3 **HLSC Discounts.** On an opt-in basis, Participating Provider shall establish a discount of their choosing to offer HLSC Subscribers.

2.4 **Wellness Talks.** On an opt-in basis, Participating Provider shall provide an original wellness education class for the Wellness Talks catalog and establish pricing. YDW will retain twenty percent (20%) of Wellness Talks fees

received as compensation for hosting the offering on its e-commerce platform and marketing.

- 2.5 **Honoring Offerings.** It is Participating Provider's responsibility to maintain their offerings and agree to honor their proprietary offerings on YDW's e-commerce platform. Failure to honor pricing is grounds for immediate termination of this Agreement.
- 2.6 **Compliance with YDW Policies.** Participating Provider shall fully comply with the YDW guidelines as they relate to the Participating Provider and all other published policies of YDW. Failure to comply with the policies and procedures of YDW may be cause for nonpayment or contract termination. Subscribers shall not be liable to Participating Provider for Covered Services when payment is denied by YDW for failure of a Participating Provider to comply with the policies and procedures of YDW. New policies and/or procedures may be implemented from time to time by YDW during the term of this Agreement. YDW shall notify Participating Provider in writing of any new policy or procedure, which policy or procedure shall become effective thirty (30) days after receipt of such notice.
- 2.7 **Professional Liability Coverage.** Participating Provider shall, at his/her sole cost and expense, maintain professional liability or general liability insurance in the minimum amount of \$1 million per incident and \$3 million in the aggregate to insure Participating Provider and Participating Provider's employees against liability for damages directly or indirectly related to the performance of Participating Provider's professional activities hereunder.
- 2.8 **Professional Judgment.** Participating Provider shall at all times provide Covered Services to Subscribers in a manner consistent with sound professional judgment and practice. Nothing herein shall be construed to require Participating Provider to take any action inconsistent with his/her professional judgment.
- 2.9 **Maintenance of Medical Records.** For each Subscriber receiving Covered Services from Participating Provider, Participating Provider shall, if it is standard practice for Participating Provider's professional license or credential, maintain appropriate medical records in such form that meets acceptable standards of practice, medical record keeping, YDW policies and procedures, and state and federal law (including the Health Insurance Portability and Accountability Act of 1996 (HIPAA)). Participating Provider shall require Subscriber authorization for the release or disclosure of medical record information to third parties for purposes other than treatment, payment and health care operations or other than as required by law. Participating Provider shall institute appropriate measures to ensure the privacy and security of Subscribers' medical record information. Participating Provider may permit Subscribers and appropriate state and federal authorities to inspect said records without authorization. Participating Provider shall furnish copies, without cost, to YDW for the purpose of investigating Subscriber appeals if requested. Participating Provider shall furnish copies to Subscribers, upon request, and state and federal authorities and may charge fees for such copies in accordance with Applicable Law.
- 2.10 **Listing of Participating Provider in YDW Marketing Materials and Notice of Change of Address.** Participating Provider agrees to allow the listing of his/her name (including logo), business address and business telephone in rosters and marketing materials used by YDW, including the YDW website. Participating Provider shall promptly notify YDW of any changes in business address, business telephone and/or tax identification number.
- 2.11 **Waiver of Claim.** Participating Provider hereby irrevocably waives any claim, agrees not to hold liable and covenants not to sue any officer, manager, member, employee, agent or committee member of YDW as a result of the termination of this Agreement, or any other non-financial sanction imposed, action taken, guideline or policy adopted, or denial of payment or retroactive collection of payment by YDW, their officers, directors, agents, employees or committee members, provided that such action was taken in good faith, reasonable efforts were made to obtain the facts, and such action was based upon a reasonable belief that it was warranted by the facts.
- 2.12 **Required Notice to YDW.** Participating Provider shall notify YDW in writing as soon as possible after one of the following events occur, or as specifically outlined herein:
- A. The Participating Provider's license or other legal credential to practice in any state is voluntarily or involuntarily relinquished, suspended, revoked, terminated or subjected to terms of probation or other restriction; or
 - B. The Participating Provider becomes the subject of any disciplinary proceeding or action before any state or other applicable professional licensing agency in any state or the federal government; or

- C. A civil action is settled or judgment made against the Participating Provider that is related to or arises out of the Participating Provider's business; or
- D. Participating Provider becomes subject to any federal government agency action including asset freezes or forfeitures, criminal arrest, indictment, fine or penalty, civil sanctions, including civil monetary penalties or fines; or
- E. Felony criminal charges are filed against the Participating Provider or the Participating Provider is arrested for a felony offense; or
- F. Participating Provider loses the ability to secure professional liability coverage as required by this Agreement; or
- G. Any event or condition arises which would materially affect the Participating Provider's ability to perform the duties and obligations under the Agreement; or
- H. There is any change of Participating Provider's business or billing address, business telephone and/or tax identification number. Notice shall be provided as outlined in Paragraph 3.11, above; or
- I. The Participating Provider becomes disabled or incapacitated, mentally or physically; such the Participating Provider cannot provide Covered Services hereunder.

Participating Provider's failure to comply with the notice requirements of this Section 2.12 may result in termination of this Agreement pursuant to Section 4.2.

- 2.13 **Limitations on Subcontracting.** Participating Provider will not subcontract any part of the performance of this Agreement to non-Participating Providers without YDW's written approval.
- 2.14 **Non-discrimination.** Participating Provider shall accept Subscribers without regard to race, religion, sex, color, nationality, origin, age, handicap, physical condition, mental health status or participation in publicly financed programs.

ARTICLE III YDW RESPONSIBILITIES

- 3.1 **Marketing.** YDW has designed, developed and implemented a marketing program for the identification and solicitation of Subscribers. YDW shall from time to time provide Participating Provider with the opportunity to promote their services to Subscribers.
- 3.2 **Eligibility Information.** YDW shall maintain and update an eligibility list of all current Subscribers. The list of Subscribers will not be made available to Participating Providers.
- 3.3 **Reimbursements.** YDW shall maintain an EWBP administration system and will promptly reimburse Participating Provider in accordance to the established reimbursement indicated in Exhibit A for Subscriber's authorized and eligible services performed by Participating Provider.
- 3.4 **Grievance Process.** YDW shall make available to Participating Provider a Grievance and Appeal process regarding all aspects of the administration of this Agreement.
- 3.5 **Provider Listing.** YDW shall, at a minimum, maintain an e-commerce platform to provide Subscribers with the name, business address, and business telephone number of Participating Provider for the purpose of selecting a Participating Provider.

ARTICLE IV TERM AND TERMINATION

- 4.1 **Term.** This Agreement shall remain in full force and effect for a term of one (1) year from the date of execution of this Agreement and shall automatically renew for subsequent one (1) year periods upon satisfactory completion of the reappointment process unless either Participating Provider or YDW terminates the Agreement in accordance with this Article IV.
- 4.2 **Termination.** This Agreement may be terminated on the first to occur of the following:
- A. Participating Provider, at any time during the term of this Agreement, may terminate this Agreement, with or without cause, with or without providing reasons for termination, upon providing YDW with thirty (30) days prior written notice.
 - B. Either party to the Agreement shall have the right to terminate this Agreement upon providing thirty (30) days written notice to the other party if the party to whom such notice is given is in breach of any material provision of the Agreement. The party claiming the right to terminate shall set forth in the notice of intended termination the facts underlying its claim of the other party's breach of the Agreement. If the breaching party has not cured the breach by the end of the thirty (30) day period, the Agreement will be deemed terminated upon the expiration of the notice period.
 - C. In cases where YDW determines in good faith that the health of Subscribers is jeopardized by continuation of this Agreement, or if Participating Provider furnished incomplete or inaccurate information on his/her application, or if Participating Provider suffers voluntary or involuntary relinquishment, revocation, termination, suspension or other limitation or restriction of his/her professional license or loss of malpractice insurance, or the ability of the Participating Provider to perform the services covered by this Agreement is otherwise impaired, YDW may terminate this Agreement or suspend the Provider's participation immediately upon written notice to Participating Provider.
- 4.3 **Effect of Termination.** As of the date of termination, this Agreement shall be considered to be of no further force or effect whatsoever and each of the parties shall be relieved and discharged from all further obligations, except that either party to this Agreement shall remain liable for any obligations or liabilities arising from activities carried on by such party prior to the effective date of termination. Termination of this Agreement pursuant to Section 4.2.A above shall in no manner release or discharge Participating Provider from any professional or legal obligation to continue to provide or arrange for the provision of Covered Services to Subscribers up to the effective date of termination. If Participating Provider is required to provide continuing Covered Services after the termination of this Agreement, Participating Provider shall continue to accept compensation according to the terms in effect under this Agreement at the time of termination. Upon the effective date of termination, Participating Provider shall immediately and permanently discontinue the use of any marks, names or indicia which in the opinion of the YDW may in any way indicate or tend to indicate that Participating Provider is in any manner associated with YDW. YDW shall update its provider listings within thirty (30) days after any termination.
- 4.4 **Non-Solicitation.** Participating Provider covenants that, during the term of this Agreement and for a period of one (1) year following termination of this Agreement, Participating Provider shall not, directly or indirectly, personally, through an agent or representative or as an agent or representative of any person or entity, (i) solicit the business of an Employer Group or communicate with any Employer Group for the purpose of providing Covered Services to any person who was a Subscriber, or (ii) communicate in any manner with a Subscriber's Employer Group for the purpose of influencing or inducing the Employer Group to discontinue their Agreement with YDW or seek care from the Participating Provider. These covenants shall not be construed as restricting the Participating Provider's right or ability to maintain a professional-client relationship or to communicate concerning continuing client care with a Subscriber. Improper communication or solicitation can include personal contact, direct mail, telephone or fax communications, electronic mail or inter-company distributions. Participating Provider agrees that YDW shall be entitled to injunctive relief in the event of a breach of Participating Provider's obligations under this Section 4.4, in addition to any other remedies YDW may have at law or in equity.

ARTICLE V

CONFIDENTIALITY OF YDW RECORDS

- 5.1 YDW and Participating Provider, during the term of this Agreement and after any termination, agree to maintain

the confidentiality of all YDW documents, including quality improvement records, Participating Provider Agreements, Provider Manuals, all statistical data, reports and standards, and all financial information relating to this Agreement. YDW and Participating Provider shall utilize their best efforts to prevent and protect such information from unauthorized disclosure by their officers, directors, independent contractors, agents and employees. Further, during and after termination of this Agreement, Participating Provider shall not use or allow their agents, employees, officers, directors, independent contractors or others under their control to use any such confidential information to the Participating Provider's competitive advantage or in any way detrimental to other Participating Providers or YDW.

ARTICLE VI CO-OP FEES

- 6.1 YDW may negotiate certain vendor discount programs for Participating Providers and receive co-op and/or rebate fees from vendors or suppliers of products, based on the volume of services or products utilized by YDW Participating Providers. Participating Provider hereby assigns to YDW all of Participating Provider's rights or claims to co-op and/or rebate fees as negotiated by YDW based upon or derived from Participating Provider's purchases. If YDW receives any co-op or rebate fees based upon or derived from Participating Provider's purchases, those co-op and/or rebate fees shall be retained by YDW for use in its marketing programs. Nothing in this Article VI is intended or should be construed to require the Participating Provider to use or sell the products of Preferred Vendors. Participating Provider has sole responsibility and total discretion in deciding which products to use or sell.

ARTICLE VII GENERAL PROVISIONS

- 7.1 **Relationship of the Parties.** In the performance of the work, duties, and obligations set forth in this Agreement, and in regard to any Covered Services rendered to or performed by Participating Provider, Participating Provider is at all times acting and performing as an independent contractor for YDW. Nothing in this Agreement shall be construed to create between YDW and Participating Provider (a) the relationship of employer-employee, principal-agent, partners or joint venturers; or (b) any fiduciary obligation other than what is contained in this Agreement and Exhibit(s).
- 7.2 **Governing Law.** The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- 7.3 **Severability.** The provisions of this Agreement shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding on the parties.
- 7.4 **Waiver of Provision.** A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms and conditions hereof. A waiver by either party of a breach or violation of any provision of this Agreement shall not be construed as a waiver of any subsequent or other breach.
- 7.5 **Entire Agreement.** This Agreement contains a full and complete expression of the rights and obligations of the parties. It shall supersede all other agreements, written or oral, previously made by the parties.
- 7.6 **Notice.** Notices required or permitted to be given under this Agreement shall be in writing and may either be delivered personally or sent via First Class Registered Mail, return receipt requested, postage prepaid:
- A. Notice to YDW shall be addressed as follows:
O'Malley & Associates, LLC dba You Define Wellness!
9615-B East County Line Road #B-345
Centennial, CO 80112
 - B. Notice to Participating Provider shall be addressed to the most current address on file for Participating Provider's primary office.

A Notice shall be deemed given three (3) days after the date it is deposited in the mail in accordance with the foregoing, or the date that it is hand-delivered to the party.

- 7.7 **Arbitration.** The parties hereto agree that any dispute or claim arising out of or relating to the making, performance or interpretation of this Agreement shall be settled by arbitration conducted by the Judicial Arbitrator Group, Inc., in Denver, Colorado or any other mutually agreeable dispute resolution organization or entity in accordance with the Colorado Rules of Civil Procedure. The arbitrator shall have no power or authority to vary or ignore the terms of this Agreement. The arbitrator shall not have power or authority to impose or award punitive or exemplary damages in any proceeding. Disputes arising in connection with this Agreement between or among others not parties to this Agreement, and any disputes or claims concerning medical or quality of service negligence to Subscribers, or other torts, shall not be subject to arbitration.
- 7.8 **Attorneys' Fees.** YDW and Participating Provider agree that the prevailing party in any arbitration proceeding between the parties hereto shall be awarded its reasonable attorneys' fees and costs against the other party by the arbitrator.
- 7.9 **Non-Exclusivity of Relationship.** This Agreement in no manner precludes or prohibits parties from negotiating or entering into similar and/or separate agreements with other provider organizations or third-party payors.
- 7.10 **Third-Party Beneficiary.** The rights and obligations of each party to this Agreement shall inure solely to the benefit of the parties hereto, and no person or entity, including Subscribers, shall be considered third-party beneficiaries to this Agreement.
- 7.11 **Amendments.** This Agreement may be amended only by a writing signed by both parties, except that YDW reserves the right to unilaterally amend this Agreement to conform with any changes in Applicable Law, and such amendment shall be effective thirty (30) days after the date notice of the amendment is sent to Participating Provider.
- 7.12 **Binding Effect.** This Agreement shall be binding on YDW, its successors and assignees, and upon the Participating Provider and his/her approved successors and assignees.
- 7.13 **Headings.** The heading of the paragraphs to this Agreement are for information only and are not to be construed as substantive additions to the paragraphs or this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

O'Malley & Associates, LLC
dba You Define Wellness

Participating Provider:

Signature: Denise O'Malley, Managing Partner

Electronic signature obtained on enrollment application

EXHIBIT A
PARTICIPATING PROVIDER EWBP REIMBURSEMENT SCHEDULE

YDW shall reimburse Participating Provider for each EWBP Covered Service performed for a Subscriber with an activated and available session according to the plan held by Subscriber:

\$60.00 per authorization

If Participating Providers' normal retail rate is less than the scheduled reimbursement, Participating Provider will be reimbursed up to the normal retail rate.

The Session Fee due from Subscriber and published on YDW's e-commerce platform will be calculated by taking Participating Provider's normal retail rate – or as discounted at Participating Provider's option – and subtracting the reimbursement stated above.

Example:

Normal retail rate = \$100

YDW Reimbursement: \$60

Collect from Subscriber: \$40