

NOTICE: ANY DISPUTE UNDER THIS AGREEMENT, NOT DISPOSED OF BY AGREEMENT BETWEEN THE PARTIES, IS SUBJECT TO ARBITRATION PURSUANT TO THE MONTANA UNIFORM ARBITRATION ACT (27-5-111 et seq. MCA).

**COBRA ADMINISTRATIVE SERVICES
AND
CERTIFICATION OF CREDITABLE COVERAGE
AGREEMENT
AGREEMENT**

This Agreement is made between Allegiance COBRA Services, Inc., (hereinafter "the TPA") and **Employer Name** (hereinafter "Employer").

WHEREAS, the Employer and/or the plan administrator of the group health insurance policy procured by the Employer is required to perform certain duties pursuant to continuation of benefits coverage requirements.

WHEREAS, the TPA has been chosen by Employer to perform nondiscretionary and ministerial duties pursuant to Employer's continuation of coverage requirements, and to perform certification of credible coverage services.

NOW THEREFORE, in consideration of the terms and conditions hereinafter set forth, the parties agree as follows:

SECTION 1: Definitions

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| 1.1 | "Ancillary Benefits" means benefits that are not administered under the group health insurance policy issued by the Insurance Carrier. | 1.9 | "Insurance Carrier" means Allegiance Life & Health Insurance Company. |
| 1.2 | "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Public Health Service Act, as amended or interpreted from time to time, and applicable regulations; or as defined by other Federal or State law, as amended or interpreted from time to time. | 1.10 | "Plan" or "policy" means the plan or group health insurance policy, which is the subject of the services requested in this Agreement. |
| 1.3 | "COBRA Participant" means any person who is properly enrolled for and entitled to benefits under the group health insurance policy, pursuant to COBRA continuation coverage. | 1.11 | "Plan Administrator" or "Plan Sponsor" means the Employer and/or its designee. |
| 1.4 | "Employer" means the plan sponsor or plan administrator as defined by ERISA or other applicable law and/or any successor organization or affiliate of such Employer which assumes the obligations of this Agreement. | 1.12 | "Qualified Beneficiary" means a covered person under the policy, who is eligible to continue coverage under the group health insurance policy in accordance with the applicable provisions of COBRA or ERISA, regarding Qualified Medical Child Support Orders, or in accordance with any other applicable Federal or State law. |
| 1.5 | "ERISA" means the Employee Retirement Income Security Act of 1974, as amended or interpreted from time to time, and all applicable regulations. | 1.13 | "Qualified Beneficiary" also means a child born to, adopted by or placed for adoption with a covered employee or former employee, at any time during active COBRA continuation coverage of that employee or former employee. |
| 1.6 | "Fee Schedule" means the listing of fees or charges for services provided under this Agreement contained in Appendix A, Fee Schedule, and incorporated by reference herein as a part of this Agreement. | | "Qualifying Event" means: |
| 1.7 | "Force Majeure Event" means any event or condition not reasonably foreseeable as of the date of this Agreement and not reasonably within the control of the party, which prevents the party from performing its obligations under this Agreement, including natural disaster, labor unrest, civil disobedience, acts of war (declared or undeclared), or actions or decrees of governmental bodies. | | a. With respect to a covered employee or former employee, termination of employment of the employee (except for termination as result of gross misconduct), or reduction of hours of employment causing the employee to become ineligible for coverage. |
| 1.8 | "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended and all applicable regulations. | | b. With respect to an eligible dependent of a covered employee or former employee, termination of the employee's employment (except for termination as result of gross misconduct); reduction of hours of employment causing the employee to lose eligibility for coverage; employee's entitlement to Medicare under certain circumstances; death of the employee, divorce or legal separation of the spouse from the employee; and an eligible dependent who ceases to be a dependent as that term is defined by the Plan. |

- c. With respect to eligible retirees and their eligible dependents, the commencement of a bankruptcy proceeding.
- d. Any other qualifying event as defined by law and as the law may be amended or interpreted from time to time.

SECTION 2: Relationship of Parties

- 2.1 Employer acknowledges that the TPA is an independent contractor as defined in Section 39-71-120, MCA, as amended, for purposes of this Agreement. As such, the TPA is not an agent or employee of Employer and does not assume any liability or responsibility for any breach of duty or act of omission by Employer.
- 2.2 Employer further acknowledges that the performance of services by the TPA does not and is not intended to make the TPA the "plan administrator", "plan sponsor", or "other fiduciary" as defined under ERISA or other applicable law, and Employer will not identify or refer to the TPA or any of its affiliates as such.
- 2.3 Employer further acknowledges and agrees that the TPA will not be deemed to be providing legal or tax advice as a result of performing its duties under this Agreement.

SECTION 3: Responsibilities of Employer for COBRA Administration

- 3.1 Qualifying Event Notice: Employer will notify the TPA or cause the TPA to be notified when employees and/or their dependents have a Qualifying Event as follows:
 - a. Within thirty (30) days after the employee's death, termination from employment for any reason including gross misconduct, or reduction of employment hours which causes a loss of eligibility for medical benefits.
 - b. Within sixty (60) days after the divorce or legal separation of the employee or the date at which a dependent child ceases eligibility under the group health insurance policy.
 - c. Within sixty (60) days after a second Qualifying Event of a Qualified Beneficiary dependent or spouse, such as the divorce or legal separation from the covered employee, death of the covered employee, or a dependent child ceasing eligibility under the group health insurance policy.
- 3.2 Late Notice of Qualifying Event: If any of the Notices of Qualifying Event required by 3.1 above are submitted after the applicable time period stated, the TPA will not enroll those persons who notice was late for COBRA continuation coverage.
- 3.3 Qualified Beneficiary Information: Employer will provide the TPA the following information with the notice of a Qualifying Event:

- a. Name, address, date of birth, Social Security number and identification number (if different from Social Security number) of the employee.
- b. Name, address, date of birth and Social Security number for any covered dependents.
- c. Date and description of the Qualifying Event, or if not a Qualifying Event, the date and reason, if known, for dropping or terminating Dependent coverage. If Employer knows that the Participant's reason for dropping or terminating Dependent coverage is in contemplation of divorce or legal separation, Employer shall notify the TPA of the same.
- d. If received by Employer, the COBRA Election Form, recorded with the date upon which Employer received the completed form.

3.4 SSI Determination Letters: Employer will forward copies of any Social Security Disability Determination letters it may receive from COBRA Participants within ten (10) days after Employer receives the same and has date stamped receipt of the letter.

3.5 COBRA Election Forms: If Employer receives requests for COBRA coverage, Employer will record on the form the date it was received by Employer. Employer will fax a copy of the form to the TPA on the date it is received by Employer, and will mail a copy of the same to the TPA within three (3) Working Days of receipt by Employer.

3.6 Premium Trust Account: COBRA Participants will be directed to make premium payments payable to the TPA. TPA will deposit premium payments and administrative fees in its COBRA premium trust account. Employer authorizes the TPA to endorse COBRA premium payments received by stamping the same with "FOR DEPOSIT ONLY" and the applicable COBRA premium trust account number and to transfer the payments to the Insurance Carrier. If Employer desires that TPA administer COBRA for ancillary benefits, then Employer authorizes the TPA to transfer the premium payments for ancillary benefits to the Employer. Employer authorizes the TPA to retain two (2) percent of the premium payment per COBRA Participant for its administrative fee.

3.7 Payment of Premiums to Insurance Carrier: COBRA Participants shall pay monthly premium payments to the TPA. Employer agrees that the sole responsibility of the TPA is to forward any COBRA premiums received in accordance with subsection 3.6 and 4.7.

Employer and/or COBRA Participants will execute any documents or forms related to submission of premiums which are required by the insurance carrier and mail the same to the insurance carrier.

- 3.8 Premium Payments by COBRA Participants: If Employer receives premium payments directly from COBRA Participants, Employer will forward those payments to the TPA with the name of the COBRA Participant for whom the premium applies..
- 3.9 COBRA Election Period: Employer designates that for purposes of the election period, a loss of coverage for a Qualified Beneficiary will occur on the date of the Qualifying Event.
- 3.10 Other: Employer will provide any other information required by the TPA to perform its obligations under this Section.

SECTION 4: COBRA Services of the TPA

- 4.1 Enrollment Packet: Within fourteen (14) days of receipt of notice from the Employer of a Qualifying Event, the TPA will mail to Qualified Beneficiaries a notice of the right to elect COBRA continuation coverage.
- 4.2 Enrollment of Qualified Beneficiaries: The TPA will enroll all Qualified Beneficiaries who elect COBRA continuation coverage within the time permitted by law. The TPA will fax a copy of each completed enrollment form to the Employer and the insurance carrier, within five (5) Working Days of receipt of the completed enrollment form.
- 4.3 Customer Service Toll-Free Line: The TPA will provide customer service assistance regarding COBRA issues to Employer and its group health insurance policy beneficiaries through a toll-free telephone number during regular business hours.
- 4.4 COBRA Participant Premiums: The TPA will bill COBRA Participants identified by Employer for the premiums.
- The TPA will collect COBRA premiums and deposit them in the designated COBRA premium trust account no less frequently than weekly.
- 4.5 Group Health Insurance Policy Premiums: By the tenth of each month, the TPA will forward all premiums collected for the previous month to the Insurance Carrier or, if applicable, to the Employer for ancillary benefits.
- 4.6 Late Premium Notices: The TPA will send a reminder notice to Qualified Beneficiaries whose premium payment has not been received on or about the twentieth day of the month.
- 4.7 Late Premium Payments: If the TPA receives a premium payment past the premium due date (including any grace period provided by law), the TPA will return the payment to the sender with a notice that it cannot be accepted. The TPA will return the payment to the sender, with such notice, within five (5) Working Days of receipt of payment. The TPA will notify Employer and the Insurance Carrier in writing of any COBRA Participant who defaults on payment of premium, including date of default and the date COBRA coverage should terminate as a result of the

default. Such notice will be faxed on the next Working Day following the date of the default.

- 4.8 Notice of Eligibility: The TPA will provide all notices of eligibility or lack thereof to employees and their dependents as required by applicable law, including but not limited to notice of ineligibility for COBRA continuation coverage due to termination of employment for gross misconduct, and notice of potential eligibility for a dependent spouse in the event of legal separation or divorce.
- 4.9 Notice of Termination or Exhaustion: The TPA will notify the Employer, Insurance Carrier and the COBRA Participant of the date COBRA continuation coverage will exhaust or terminate in the absence of any default, for each COBRA Participant. Notice will be sent via fax or email to the Employer within five (5) Working Days after the TPA receives notice of COBRA coverage exhaustion or termination. Notice of exhaustion or termination will be sent by first class mail to the COBRA Participant within 30 (thirty) days of the termination date.
- 4.10 Notice of Default: The TPA will notify each COBRA Participant, in writing, of any default causing loss of coverage, including the date of default and the date COBRA continuation coverage terminates.
- 4.11 Employer Reports: The TPA will provide a monthly eligibility report to the Employer and Insurance Carrier. The TPA shall also prepare and submit a monthly premium reconciliation report to the Employer and Insurance Carrier.
- 4.12 Conversion Coverage: If the policy allows conversion rights or other such similar rights, the notices will be supplied by the insurance conversion coverage company providing such coverage. Notices will be provided in the manner required by applicable law. The TPA will have no other responsibility, except as specifically stated in this subsection, regarding conversion coverage.

SECTION 5: Employer's Responsibilities for Creditable Coverage Certification

Notice: Employer will notify the TPA within thirty (30) days of loss of coverage when an employee and/or dependent's coverage under the Employer's group health insurance policy or under COBRA Continuation Coverage is terminated. Employer shall provide the reason for termination, if known.

SECTION 6: Creditable Coverage Certification Services of the TPA

- 6.1 Customer Service Toll-Free Line: The TPA will provide customer service assistance regarding Creditable Coverage to Employer and beneficiaries under Employer's group health insurance policy through a toll-free telephone number during regular business hours.
- 6.2 Certificates of Credible Coverage: The TPA will provide Certifications of Creditable Coverage as required by law, to employees, dependents and others authorized to

receive this information.

SECTION 7: TPA Compensation

TPA's compensation for services provided under this Agreement is included in the Allegiance Life and Health Insurance Company premium for group medical benefits.

SECTION 8: Exclusions

- 8.1 **Illegal Acts:** No party hereto will be required to perform any act or omit any act which would be a violation of any law or regulation, unreasonably expose a party to civil liability, or which violates any code of ethical conduct.
- 8.2 **Benefits Advice:** The TPA will not provide any benefits advice or benefits verification to COBRA Participants or health care providers and will refer all such inquires to the Insurance Carrier.
- 8.3 **NSF Checks:** This Agreement will not be construed in any manner to require the TPA to collect insufficient funds, "stop-payment" or otherwise dishonored checks, or other negotiable instruments received for premium payments, which are subsequently not paid by the maker. The TPA will not be liable for any losses to Employer as a result of such checks or negotiable instruments.
- 8.5 **Determinations of Gross Misconduct:** The TPA will not make any determinations of any nature regarding whether a Qualified Beneficiary's termination from employment was due to gross misconduct.

SECTION 9: Indemnification

- 9.1 **Misconduct of Party:** Neither party will be responsible for the negligence, gross negligence, and intentional, willful or criminal acts of the other in any manner. Either party who commits such a negligent, grossly negligent, willful, intentional or criminal act will indemnify and hold the other harmless for all damages or costs, including attorney fees, incurred as a result of that act.
- 9.2 **Premium Payments/Loss of Coverage:** The TPA will receive and forward all premium payments in accordance with this Agreement. Except as provided for in Section 4.4, the TPA will have no liability regarding the processing of premium payments. Provided the TPA acts in accordance with this Agreement, the TPA will have no liability to any person or entity for loss of COBRA coverage as a result of late or nonpayment of premium. Employer will hold the TPA harmless, and indemnify the TPA for all damages, including payment of attorney fees and costs of defending any claim, regarding all claims or suits by persons for loss of COBRA coverage as a result of late or nonpayment of premium.
- 9.3 **Failure of Employer to Notify:** The TPA will provide all notices to COBRA participants and Qualified Beneficiaries in accordance with this Agreement. Provided the TPA acts in accordance with this Agreement, the TPA will have no liability to any COBRA participant or Qualified Beneficiary for failure of the Employer to properly notify the TPA and provide the information required for the TPA to perform its

obligations under this Agreement. The TPA will have no liability for the accuracy of the information provided by the Employer. Employer will hold the TPA harmless, and indemnify the TPA for all damages, including payment of attorney fees and costs of defending any claim, as a result of Employer's failure to properly notify the TPA and provide information to the TPA.

SECTION 10: Term and Termination of Agreement

- 10.1 **Term:** This Agreement begins on the first day of the policy period for the Allegiance Life & Health Insurance Company policy to which this agreement applies and ends upon cancellation or termination of such policy. This Agreement will automatically be renewed for additional periods of one year upon renewal of the applicable Allegiance Life & Health Insurance Company group medical insurance policy .
- 10.2 **Termination:** Either party may terminate this Agreement at any time concurrent with cancellation or termination of the Employer's Allegiance Life & Health Insurance Company group medical insurance policy.
- 10.3 **Immediate Termination:** Either party may, at its sole option, terminate this Agreement with ten (10) days' written notice to the other party, upon the occurrence of any one or more of the following events:
- Either party engages in any unethical business practice or fails to comply with any federal, state, or other government statute, rule, or regulation;
 - Either party, through its acts, practices, or operations, unreasonably exposes the other party to any existing or potential investigation or litigation;
 - Either party loses any licensure or certification required by law to perform its obligations under this Agreement;
 - Court appointment of a permanent receiver for all or substantially all of either party's assets; or
 - A general assignment for the benefit of the creditors of either party; or
 - The filing of a voluntary or involuntary petition of bankruptcy by either party, if such petition is not dismissed within forty-five (45) days of the date of filing, provided that an order for relief from automatic stay has been obtained, or with respect to a Chapter 11 proceeding, that the bankrupt or Bankruptcy Trustee fails to reaffirm this Agreement and provide adequate assurances pursuant to 11 USC 365.
- 10.4 **Force Majeure:** The party affected by the Force Majeure Event shall immediately notify the non-affected party. Upon receipt of such notice by the non-affected party, all obligations under this Agreement will be immediately suspended. The party who has been so affected will do everything possible to resume performance. If, however,

the period of non-performance exceeds fourteen (14) Working Days from the receipt of notice by the non-affected party, the non-affected party may, by giving ten (10) Working Days, written notice, terminate this Agreement.

10.6 Survival: The provisions of Section 2, Section 7, Section 9 and Subsection 11.7 shall survive termination of this Agreement.

SECTION 11: **General Provisions**

11.1 Authorization: Employer grants to the TPA the authority to do all acts it deems necessary to carry out the terms of this Agreement.

11.2 No Waiver: No forbearance or neglect on the part of either party to enforce or insist upon any of the provisions of this Agreement will be construed as a waiver, alteration, or modification of this Agreement.

11.3 Entire Agreement, Amendments, and Modification: This Agreement and any attachments constitute the entire agreement between the parties with respect to its subject matter. This Agreement supersedes all existing agreements and all other oral, written or other communications between them concerning its subject matter. This Agreement or any attachment shall not be amended or modified except as agreed upon in writing and signed by the parties. If any such modification or amendment increases the TPA's costs under this Agreement, the Employer agrees to pay any increases in administrative fees or other costs which the TPA reasonably expects to incur as a result of such modification.

11.4 Severability: If any provision of this Agreement is held to be invalid, illegal, or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

11.5 Agreement Counterparts: This Agreement may be executed in two or more counterparts, each and all of which will be deemed an original and all of which together will constitute but one and the same instrument.

11.6 Assignment: Neither party shall assign or transfer in any manner its obligations, rights, interests, or any part thereof under this Agreement without the prior written consent of the non-assigning party. Any assignment in contravention of this Agreement is null and void. The foregoing shall not apply to the assignment of this Agreement to any successor in interest of the TPA, provided, however, the TPA sends prior written notice to the Employer.

11.7 Notice of Threatened Litigation: The Employer will notify the TPA within ten (10) Working Days of any threatened litigation, lawsuits or regulatory complaints or inquiries pertaining to subject matter of this Agreement, or any inquiry made by any federal or state authority regarding the same.

11.8 Compliance with Applicable Laws: The TPA shall comply with all applicable federal and state laws and regulations with respect to the services TPA expressly agrees to perform under this Agreement.

11.9 Notice: The TPA will not be bound by any notice, directive or request unless and until it is received in writing at this mailing address or fax number:

2806 South Garfield Street
P.O. Box 2097
Missoula, MT 59806-2097
(Fax) (406) 523-3131

Employer and/or Plan Administrator will not be bound by any notice, directive or request unless and until it is received in writing, by facsimile transmission, or by e-mail address, at its primary place of business as designated in Appendix B.

11.10 Choice of Law: This Agreement shall be governed by, and construed in accordance with the laws of the State of Montana, except to the extent those laws may be superseded by applicable federal law or regulation.

11.11 Arbitration: Any dispute not disposed of through mutual agreement will be submitted for arbitration in Missoula, Montana, or such other place selected by mutual agreement of the parties. The Arbitrator will be selected by mutual agreement of the parties. Failure to agree will result in application to the district court for appointment of the arbitrator. Any award rendered may be confirmed in district court and judgment docketed as if rendered in an action.

11.12 Attorney Fees: If either party breaches or defaults in the performance of their obligations under this Agreement, the breaching party will pay all reasonable attorney fees and costs incurred by the other party as a result of such breach or default.

11.13 Headings: Section headings are included only for convenient reference and do not describe the sections to which they relate.

11.14 Interpretation of Words: Words denoting the singular include the plural and vice versa.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives' signatures, on the date first above written.

EMPLOYER NAME
ADDRESS
CITY, STATE ZIP

ALLEGIANCE COBRA SERVICES, INC.
2806 S. Garfield St.
PO Box 2097
Missoula, MT 59801

Name: _____ Date: _____

Title: _____

Name: **Ron Dewsnup** Date: _____

Title: **President and General Manager**

