

# COBRA OUTSOURCING COMPANY

Customer Service Agreement – V15.1 PEPM ACH

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between COBRA Outsourcing Company, a Nebraska corporation ("Company"), located at 302 S. 36th St., Ste. 700, Omaha, NE 68131, and \_\_\_\_\_ "Customer"), located at \_\_\_\_\_.

WHEREAS, Customer and the plan administrator of the group health plan(s) sponsored by Customer are required to perform certain duties under the Group Health Plan Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, ("COBRA"); and

WHEREAS, BUSINESS RESOURCE SERVICES ("BRSVT") provides certain membership services to Employer and as an added benefit of these membership services agree to pay part of the costs of services rendered to Employer and/or the plan administrator in satisfying specified duties under COBRA's continuation coverage requirements; and

WHEREAS, Employer and Company wish to enter into this agreement whereby Company shall render services to Customer and/or the plan administrator in satisfying their duties under COBRA's continuation coverage requirements for the group health plan(s) listed in Schedule B to this Agreement (the "Plan(s)").

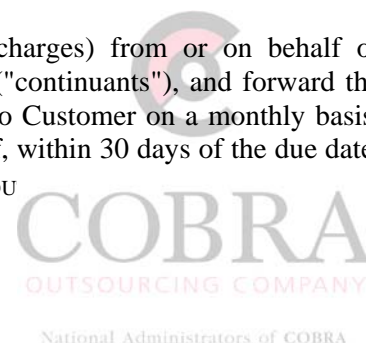
WHEREAS, Employer and Company acknowledge that BRSVT is neither a party to this agreement nor responsible for any Employer duties as written in this agreement.

NOW THEREFORE, in consideration of the premises and of the covenants set forth herein, Company and Customer agree as follows:

1. Duties of Company. Commencing on the Effective Date as set forth in Section 4 of this Agreement, Company shall provide the following services with respect to the Plan(s).
  - (a) Upon Customer's request, Company shall provide notification containing the information required to be included in the COBRA initial notification to all benefit eligible employees of Customer and dependents who are participants under the Plan(s) and whose names and addresses are furnished by Customer using written or electronic forms approved by Company.
  - (b) Company shall advise employees and other qualified beneficiaries of their rights to elect and receive COBRA continuation coverage under the Plan(s), after Customer has notified Company of the occurrence of one of the qualifying events set forth in Section 2(a) below with respect to such individual. Covered employees shall be notified in writing by first class U.S. mail with certificate of mailing or an equivalent process. Company shall take all commercially reasonable action to mail the notices within five (5) business days of receiving proper notice from Customer. If the employee or other qualified beneficiary is not entitled to COBRA coverage, Company shall provide a "notice of unavailability" to the qualified beneficiary that includes an explanation of why the employee or other qualified beneficiary cannot elect COBRA coverage. Company shall take all commercially reasonable action to mail the notices within five (5) days of receiving proper notice from Customer.
  - (c) Company shall receive and document election responses.
  - (d) Company shall collect premiums (including administrative charges) from or on behalf of individuals who elect to continue coverage under the Plan(s) ("continuant"), and forward the amount of the paid premiums less the administrative charges to Customer on a monthly basis. Company shall consider COBRA premiums to be timely paid if, within 30 days of the due date,

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such premiums are actually delivered to Company, postmarked by the U.S. Postal Service or sent by express delivery service (with evidence thereof), unless Customer advises Company in writing that a longer period applies under the Plan(s). Actual delivery, postmark or evidence of express delivery will also be used to determine timeliness of COBRA elections based on applicable statutory periods. Company shall not be responsible for reviewing the Plan(s) in any respect or for comparing the Plan(s) with the group health plan sponsored by another employer or Medicare.

- (e) Company shall advise Customer, in writing, of the status of each continuant electing continued coverage under the Plan(s) within ten (10) business days after the end of each calendar month. These status reports will include continuants who are current on their premium payments, and continuants who have been canceled for failing to remit premium payments pursuant to the requirements of COBRA, as implemented in accordance with this Agreement.
- (f) Company shall provide Customer, upon request, with forms to be used to notify Company of a "qualifying event", in accordance with Section 2(a) of this Agreement.
- (g) Upon Customer's request and provision of the proper and complete information, in accordance with Section 2(a)(2), Company shall mail HIPAA certificates. Upon request on behalf of an employee or former employee, Company shall also mail such certificate, if the request is made within 24 months of the later of: (1) the time the individual ceased to be covered under the respective Plan or otherwise became covered under a COBRA continuation provision; or (2) in the case an individual was covered under such provision, at the time the individual ceases to be covered under such provision; provided the respective Employer gives Company the proper and complete information. Company shall mail the certificates, first class U.S. Mail, to covered employees and qualified beneficiaries. Notices shall only be sent to those covered employees and beneficiaries as Customer expressly requests in writing. Company shall have no other obligation with regard to HIPAA compliance or state law. In conjunction with Company's (1.(e)) report, Company shall identify all HIPAA certificates mailed.
- (h) Upon the provision of notice to Company of grounds for termination of COBRA coverage, Company shall provide the continuant with a notice of termination of COBRA coverage. Covered employees shall be notified in writing by first class U.S. mail with certificate of mailing or an equivalent process. Company shall take all commercially reasonable action to mail the notices within five (5) business days of receiving notice of grounds for termination of coverage.
- (i) If the Plan(s) offer an option of conversion to an individual health insurance policy when COBRA coverage under the Plan(s) is exhausted, and if the Customer has provided Company with proper and complete information regarding the existence and terms of such conversion option, Company shall provide the continuant with a notice of his or her conversion rights under the Plan(s). Such notice shall be provided in writing by first class U.S. mail with certificate of mailing or an equivalent process, within one hundred eighty (180) days of the end of the maximum COBRA coverage period. Company shall not be responsible for notifying the employee or other qualified beneficiary of any conversion right outside of COBRA coverage.
- (j) Company shall comply with all applicable federal, state and local laws with respect to the services expressly agreed to be performed on behalf of Customer.
- (k) Company responsibilities include only the services expressly set forth herein and shall not include any other notices or certificates.

## 2. Duties of Customer.

- (a) Customer shall provide Company with all such information, as Company requires in its sole discretion, to properly advise qualified beneficiaries under COBRA, in writing, of their rights to elect and receive COBRA continuation coverage under the Plan(s). Customer shall be exclusively responsible for the accuracy and completeness of the information provided to Company. Customer shall provide notice to the Company as soon as reasonably possible of any of the following events that will result in a loss of coverage under one of Customer's Plan(s) ("qualifying events"):
- (1) (i) For a covered employee
- Termination of employment (other than for gross misconduct) or reduction in hours of employment.
- (ii) For spouses or dependent children of a covered employee
- The covered employee's termination of employment (other than for gross misconduct) or reduction in hours of employment.
  - The covered employee's death.
  - A divorce or legal separation of a spouse from a covered employee.
  - A covered employee's entitlement to Medicare benefits.
  - A child's loss of dependent status under the plan(s).
- (iii) For retirees, their spouses and dependent children:
- The commencement of a bankruptcy proceeding.
- (iv) Any other qualifying event as defined by law, and as the law may be amended or interpreted from time to time.
- (2) Customer shall notify Company, at the same time and manner as required in Section 2(a)(1), of a qualifying event, other coverage termination, or request that requires a HIPAA certificate as described in Section 1(g). Customer shall provide Company with all such information, as Company requires in its sole discretion, to properly draft and deliver the HIPAA certificate. Customer shall be exclusively responsible for the accuracy and completeness of the information provided to Company. Customer shall be responsible for all determinations relating to the information to be certified. Customer shall review Company's monthly reports to confirm that Company timely received all requests for HIPAA certificates. This Agreement does not anticipate or apply to individual health information that is protected under any privacy and/or security regulations implemented by the Department of Health and Human Services pursuant to their authority under HIPAA.
- (b) Customer shall notify the Company as soon as possible, but in no event later than five (5) business days after becoming aware, that any qualified beneficiary was disabled (as defined by the Social Security Act) at the time of the qualifying event, has become disabled within sixty (60) days of a qualifying event or having been disabled, is no longer disabled.

- (c) Customer shall notify the Company in writing as soon as reasonably possible of the addition, termination or modification of any Plan.
- (d) Customer shall notify the Company as soon as possible, but in no event later than five (5) business days after becoming aware of a determination of Trade Adjustment Assistance ("TAA") for any qualified beneficiary by either the United States Department of Labor or a state agency.
- (e) For each qualified beneficiary, Customer shall determine the premium rates to be charged for COBRA continuation coverage and shall notify Company of such premiums. Customer shall notify Company of any change in premium rates affecting continuants or prospective continuants under a Plan as soon as reasonably possible after being made aware of such premium rate change.
- (f) Upon receipt, Customer shall immediately examine the Company's monthly status reports and shall notify the Company of any discrepancies between such monthly status reports and Customer's own records as soon as reasonably possible, but in no event later than five (5) business days after becoming aware of such discrepancies.
- (g) All notices to be provided to the Company shall be in writing and, where requested by Company, shall be on forms provided to Customer by Company. The Customer shall be solely responsible for determining whether or not an employee has had a qualifying event, including, without limitation, whether the employee has been terminated for gross misconduct.
- (h) Customer shall notify and advise Company of qualified beneficiaries who, at the time of a qualifying event, have been deemed incompetent and provide Company with the name and address of such individual's legal guardian.
- (i) Customer represents that the Plan(s) will be maintained during the term of this Agreement in accordance with ERISA, and the Internal Revenue Code of 1986, as amended, and other applicable law. Customer, the Plan(s) administrator and/or the Plan(s) (and their agents or assigns), and not Company, shall be responsible for the review and payment of claims for benefits under the Plan(s) and all appeals under ERISA and other applicable law, including, without limitation, with respect to claims, benefits and eligibility determinations under the Plan(s).
- (j) At Company's request, Customer shall provide Company specified information and communications solely through Company's Website. In this event, Company shall provide Customer an access password. Upon its initial access, Customer shall use the procedures set forth on the Website to change its password and Customer shall be solely responsible for keeping its password confidential and secure. Customer is responsible for the accuracy and completeness of all information provided to Company. Company's monthly reports to Customer shall be made available through Company's Website. New reports shall be generally available to Customer on the Website by the fifth (5<sup>th</sup>) day of each month. Within ten (10) days after Customer's reports have been made available to Customer on Company's Website, Customer shall review Company's reports and immediately advise Company of any discrepancies. Customer shall be responsible for all damages that result or could have been avoided had Customer timely reviewed its reports and advised the appropriate parties of any discrepancies. In the event of interruption of Website access, Company's sole obligation and liability shall be to restore service as soon as reasonably possible. Company makes no other warranties, express or implied, with respect to the Website and the availability of the Website.

Company may share information provided pursuant to this Agreement with Customer's insurance broker or representative, unless Customer provides Company written instructions to the contrary.

3. Fees and Charges. As compensation for the services provided by Company under this Agreement, Customer shall pay Company in accordance with the fees and charges set forth in Schedule A to this Agreement. If any amounts are not paid when due, a late charge of 1½% per month or the highest late charge allowed by law, whichever is less, shall apply to such unpaid amounts from the due date until paid in full. In addition to the fees and charges set forth in Schedule A, Company shall charge and retain the 2 percent administrative charge paid by each continuant under the Plan(s) as compensation for the handling of premium payments or shall charge and retain any greater administration charge allowed by law, whichever is higher. Company shall give Customer at minimum a thirty (30) days advance notice of Schedule "A" price adjustments, which Company may institute from time to time.
4. Effective Date of Services and Term of Agreement. The "Effective Date" for commencement of services to be rendered by Company shall be \_\_\_\_\_. This Agreement may be terminated as provided in Section 5 below.
5. Termination of Agreement. Either party may terminate this Agreement without cause after thirty (30) days written notice to the other party of the intent to terminate. In the event of payment default by Customer, Company may terminate this Agreement if, after five (5) days written notice, Customer fails to deliver full payment. In the event that either party shall terminate this Agreement, Company will, within fifteen (15) days of receipt of payment in full, provide Customer with a status report of each of the continuants who were subject to this Agreement as of the date of termination in order to permit Customer to provide continuation services with respect to the Plan(s). The provisions of Sections 7 through 19 of this Agreement shall survive the termination of this Agreement.
6. Audit Rights. During the term of this Agreement and for a period of two (2) years after the termination of this Agreement, Customer may inspect any COBRA compliance transactions, procedures, records and participant files relating to Customer's employees (and their dependents), at Company's office at a time reasonably acceptable to Company, upon providing ten (10) business days advance written notice to Company.
7. Claims and Indemnity. Notwithstanding anything in this Agreement to the contrary, Company shall not be responsible to receive or review claims for benefits under the Plan(s) or be liable for the payment of any claims for benefits under or in connection with the Plan(s), including, without limitation, where sought as damages in an action against Customer, Company or otherwise. Customer agrees to hold Company harmless (including reasonable attorneys fees and costs) in connection with any claim or cause of action, which results from the failure or alleged failure of Customer (including its officers and employees, any entity related to or performing services on behalf of Customer, or any insurance company providing services to or on behalf of the Plan(s)) to comply with COBRA or any other applicable federal or state law.
8. Confidential Information. Both during and after the term of this Agreement, Customer shall hold for Company's benefit and shall not use or disclose to any third party any trade secrets, or confidential information, knowledge, or data relating to the subject of this Agreement or related materials relating to the Company's operations, business, or affairs including, without limitation, pricing proposals or pricing agreements. This restriction will not apply to disclosure to legal, tax or financial advisors; provided those advisors are notified of this provision and the advisors agree to use their respective best efforts to protect against any further disclosure by these persons.
9. Ownership Rights in Materials. All products, forms, procedures and other materials (the "Materials") utilized or made available by Company to Customer in connection with any service performed under

this Agreement are the sole property of Company, and Customer shall not acquire any right, title or interest in the Materials by use thereof in accordance with this Agreement. Customer shall not license, market, copy, modify, sell or transfer any of the Materials, in whole or in part. Customer acknowledges and recognizes that any breach of this section would result in irreparable harm to Company, and, accordingly, agrees that in addition to and not in lieu of all remedies available to Company by reason of such breach (at law or equity), Company shall be entitled to equitable relief (including, without limitation, specific performance and injunctive relief) to enjoin the occurrence or continuation of such breach. Upon Company's request, Customer shall promptly return all Materials to Company following the termination of this Agreement.

10. Ownership of Systems and Software. Company shall be the sole and exclusive owner of all right, title and interest (including, without limitation, all intellectual property rights) in and to the systems and software utilized by Company to perform the Services. Customer shall not, and shall not permit any third party to, (a) modify, copy or otherwise reproduce the systems or software, (b) remove, destroy or omit any copyright notices, legends, labels and other notices of proprietary interests appearing in or on any of the software, or (c) attempt to decompile or reverse engineer the software.
11. No Implied Licenses. Except as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to Customer, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any software, literary works, other works of authorship, specifications, design documents and analyses, programs, documentation, reports, and similar work product owned by Company.
12. Relationship of Parties. Customer and Company acknowledge and agree that Company is retained under this Agreement to assist Customer, the Plan(s) and/or the plan administrator of the Plan(s) with their obligations to comply with the continuation coverage provisions of COBRA, and that Company is not a fiduciary under ERISA. The parties further acknowledge that Company is an independent contractor and not a joint venturer with or partner, agent or employee of Customer, the Plan(s) or the plan administrator of the Plan(s). Nothing contained in this Agreement shall be deemed to permit either party to conduct business in the name of or on account of the other party, or to act on behalf of or bind the other party in any manner whatsoever, except for the taking of actions by Company on behalf of Customer, the Plan(s) or the plan administrator of the Plan(s) in the fulfillment of Company's duties under this Agreement.
13. Reliance by Company. Company shall be fully protected in relying upon representations by Customer set forth in this Agreement and communications made by or on behalf of Customer in effecting its duties under this Agreement. Customer represents that the signatory to this Agreement is authorized to enter into such Agreement on behalf of Customer, the Plan(s) administrator(s) and/or the Plan(s).
14. Indemnification of Customer. With regard to 3<sup>rd</sup> party claims only, during the term of this Agreement, subject to Customer's reasonably accurate and timely performance of its duties under this Agreement, Company shall indemnify and hold Customer harmless from any and all liability, actions, claims, judgments, losses, damages and costs (including reasonable attorney fees) arising out of the Company's breach of its obligations contained in this written agreement. Should liability be related to excise taxes imposed on Customer by the Internal Revenue Service arising out of any COBRA violation directly caused by the failure of Company to timely and properly perform any of the services that Company is obligated to provide under this Agreement, Company shall have the right to challenge the assessment of, or seek a waiver from the Internal Revenue Service with respect to, all or any portion of such excise taxes, and Customer shall fully cooperate with Company in such regard. Customer, and not Company, shall have responsibility with respect to any liability or excise taxes in cases where liability arises out of Customer's act or failure to act in accordance with any applicable law or this Agreement. Company shall not be responsible for any damages to Customer arising out of the dishonest, fraudulent, or criminal acts of Customer, its employees, directors, or officers, acting alone or in collusion with others.

15. Limitation of Liability. EXCEPT AS SPECIFICALLY LIMITED IN SECTION 14 ABOVE, IN NO EVENT WILL COMPANY BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, AND/OR CONSEQUENTIAL DAMAGES HOWSOEVER INCURRED OR DESIGNATED, OR ANY LOSS OF PROFITS, EVEN IF COMPANY WAS INFORMED OF THE POSSIBILITY OF SUCH LOSS.
16. Force Majeure. Company shall not be liable for failures or delays in performance which are caused by natural disasters, strikes, war, utility outages, communication outages, or any other circumstances which could not have been reasonably foreseen and avoided by commercially reasonable action, or are beyond the reasonable control of Company. Company shall be excused from performance under this Agreement for the duration of the effects of such circumstances.
17. Entire Agreement, Amendments And Modifications. This Agreement represents the entire agreement between the parties, and there are no oral or other written agreements or understandings between the parties affecting this Agreement, or related to the services to be provided by Company or duties undertaken by Customer under this Agreement. This Agreement supersedes all previous agreements between the parties. This Agreement may be amended only by a written agreement executed by Customer and Company. Customer may not assign this Agreement without the express written consent of Company.
18. Third Party Beneficiaries. The parties do not intend, by the execution of this Agreement, to provide any rights to third parties under this Agreement.
19. Governing Law and Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of Nebraska, except to the extent preempted by ERISA. If any provision of the agreement is held to be invalid in any court of competent jurisdiction, such finding shall not invalidate the remainder of the Agreement. With respect to any claim arising out of this Agreement, (a) each party irrevocably submits to the exclusive jurisdiction of the courts of the State of Nebraska, or the United States District Court, located in Douglas County, Nebraska, and (b) each party irrevocably waives any objection which it may have at any time to the venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any such court and irrevocably waives any claim such suit, action or proceeding is brought in an inconvenient forum and further irrevocably waives the right to object, with respect to such claim, suit, action or proceeding brought in any such court, that such court does not have jurisdiction over such party.

**Accepted by Customer:**

\_\_\_\_\_ type customer name here

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

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

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

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

**Accepted by Company:**

**COBRA Outsourcing Company**

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

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

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

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

**COBRA Outsourcing Company**  
**Customer Service Agreement**  
**Schedule A**

**SPECIAL FEES FOR BRS MEMBERS**

**COBRA & HIPAA Ongoing Services:**

20 or fewer employees (does not include the ancillary services)	Billed to BRSVT
21-49 employees (does not include the ancillary services)	\$249 flat fee(annual)Billed to Employer
50-999 employees(does not include the ancillary services)	\$249 plus \$9.99 for each employee above 50 Billed to Employer

**Optional Services Available:**

Current Employee General COBRA & HIPAA Notices:	\$3.00 per letter
Retiree Billing Services:	\$5.00/ retiree/ billing cycle
Special Assessment for Manual Processing of Forms:	\$7.50 per form – Billed to Employer

(not charged if using [www.cobraoutsourcing.com](http://www.cobraoutsourcing.com))

Account Settlement Option (must choose one)

Monthly ACH

To facilitate the payment of the fees, charges, taxes or other amounts due or payable to Company under this Agreement, Customer will provide Company with access to a bank account of Customer's funds not requiring signature and will notify Company of the demand deposit account number and transit routing number for the account. Company may, on a monthly basis, draw upon the bank account to pay charges, fees, taxes or any other amount due or payable to Company under the terms of this Agreement for services performed during the preceding month. Concurrently herewith, Customer will execute a Bank Account Designation in the form attached as Schedule C hereto, pursuant to which Customer designates the bank account and authorizes Company to initiate ACH debit and credit entries to the bank account, which Customer certifies is held at an ACH-participating financial institution. The detailed records of the amounts drawn on the account of Customer will be provided by Company to Customer on a monthly basis by electronic mail.

Annual Bill

Dated: \_\_\_\_\_, 20\_\_

Customer: \_\_\_\_\_

Company: \_\_\_\_\_

COBRA Outsourcing Company

### Schedule C

#### ACH FUNDS SETTLEMENT AND TRANSFER AUTHORIZATION

\_\_\_\_\_ ("Customer") desires to effect settlement of credits and debits from the designated Customer bank account by means of ACH in conjunction with the terms and conditions contained in the Customer Service Agreement executed by Customer and COBRA Outsourcing Company ("Company"). In accordance with this desire, Customer authorizes Company to initiate debit and credit entries to the designated Customer bank account (the details of which are set out below). Customer states that it has authority to agree to such transactions and that the designated Customer bank account indicated is a valid and legitimate account for the handling of these transactions. This authority is to remain in effect until Company receives written notice from Customer revoking it. This authorization is for the payment of any and all sums owed between Customer and Company. Customer also certifies that the appropriate authorizations are in place to allow Customer to authorize this method of settlement. All changes to the identification of the designated Customer bank account under this authorization must be made in writing.

1. Affix voided check here with tape.
2. Instrument must bear ABA routing number and account number in MICR characters.
3. Make sure that instrument is from institution to/from which funds are to be transferred.
4. Void the instrument properly.
5. Accounts Receivable Contact:\_\_\_\_\_.
6. A/R Email:\_\_\_\_\_.

In accordance with the terms set out above, transfer funds to/from the account set out above:		
Authorized by: (Signature)	Printed Name:	Title:
		Date:
Customer Phone:	Fax:	Email:
ACH Settlement Date: <input type="checkbox"/> 5 <sup>st</sup> of the Month <input type="checkbox"/> 15 <sup>th</sup> of the Month	<b>NOTE:</b> Be sure to include a copy of your most recent health insurance monthly billing statement.	