

# AGREEMENT FOR COMPLIANCE WITH COBRA

## BY COBRA

16800 Dallas Parkway, Suite 120, Dallas, Texas 75248

Phone: 972 248-7277

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## RECITALS

1. Bentley, Yates COBRA Serv., Inc. dba BY COBRA (herein after referred to as "BYC") owns and operates a service corporation designed to assist and provide Employers with compliance with the Consolidated Omnibus Budget Reconciliation Act of 1985 (hereinafter referred to as "COBRA" ), Public Law 99-272 and any subsequent amendments thereto;
2. Employer/Plan Administrator is \_\_\_\_\_ Plan Administrator is subject to the requirements of COBRA with respect to a group health plan(s) offered to its employees and qualified beneficiaries;
3. All references to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) apply only if Plan Administrator designates affirmatively in Section 8 of this Agreement for HIPAA Administrative Services.
4. In consideration of the mutual promises set forth herein, it is agreed by and between the parties hereto as follows:

## SECTION I. DUTIES OF BYC

BYCSI hereby agrees to assist Plan Administrator in relationship to its duties and responsibilities under COBRA and HIPAA (if applicable under this Agreement) as follows:

- A. BYC shall assist Plan Administrator in accomplishing and performing those notifications and certificates as required by COBRA and HIPAA on behalf of Plan Administrator with respect to its group health plan(s). BYC shall be responsible for generating COBRA notifications and HIPAA certificates after receipt of complete data from Plan Administrator, regardless of Plan Administrator's method of delivery.
- B. BYC shall additionally provide confirmation reports and such other documentation to Plan Administrator.
- C. BYC shall also provide current and updated information to Plan Administrator relating to compliance with COBRA and HIPAA, including any changes or modifications in compliance requirements and related steps necessary to act in accord with said changes/modifications.
- D. BYC, or its officer or designated agent, shall also be available to attend any audit held by the Internal Revenue Service, or hearing by any governmental agency or bureau, regarding compliance with COBRA or HIPAA by Plan Administrator, and will provide, at such audit or hearing, records, and documentation so as to assist Plan Administrator at such hearing in evidencing compliance with COBRA or HIPAA.
- E. In certain instances, BYC shall accept verbal direction from Plan Administrator when necessary to fulfill BYC's duties under the terms of this Agreement.

## SECTION 2. DUTIES OF PLAN ADMINISTRATOR

Plan Administrator shall report all such information necessary for BYC to provide such COBRA notifications and HIPAA certificates (if applicable under this Agreement) for Plan Administrator in accordance with COBRA and HIPAA regulations in the format required by BYC. COBRA premium rates reported by Plan Administrator at the time of account setup and as periodically updated by Plan Administrator will be used by BYC in generating Qualifying Event notices. Plan Administrator shall report all COBRA Qualifying Events to BYC within 30 days of the Qualifying Event as required by the COBRA law.



# **COBRA PREMIUM COLLECTION SERVICES AGREEMENT**

## **SECTION I. OVERVIEW**

Purpose of Agreement - COBRA Premium Collection Service. By checking the box above, Plan Administrator hereby retains BYC to provide, and BYC hereby agrees to provide (in addition to the services described on the reverse side of this agreement) the non-discretionary premium collection and transmittal services described herein. BYC's ministerial premium collection services hereunder are undertaken in accordance with the BYC Premium Collection Guidelines as contained within Plan Administrator's manual and as they are amended from time to time by BYC. Plan Administrator is responsible for receiving COBRA premium payments from Qualified Beneficiaries until the effective date of the BYC Premium Collection Service or BYC's receipt of completed People on COBRA information, whichever is later.

## **SECTION 2. BYC COBRA PREMIUM COLLECTION DUTIES**

During the term of the collection service under this agreement, as a part of its ministerial services hereunder, Plan Administrator hereby directs that BYC perform and be responsible for:

- A. Billing and collecting COBRA premium payments on behalf of Plan Administrator with respect to Qualified Beneficiaries under the plan(s) who have made timely elections of COBRA continuation coverage, and transmitting those premium payments to Plan Administrator (or as directed by Plan Administrator), all in accordance with this agreement.
- B. Providing standard eligibility reports on a periodic basis to Plan Administrator (or as directed by Plan Administrator in writing).
- C. Maintaining records demonstrating the timeliness of COBRA premium payments made on behalf of Qualified Beneficiaries, including but not limited to copies of envelopes reflecting postmarks and dates of mailing.
- D. Determining whether COBRA Qualified Beneficiaries have paid their COBRA applicable premiums in full and in a timely fashion all as directed by Plan Administrator through the provisions of this agreement.

## **SECTION 3. PLAN ADMINISTRATOR DUTIES**

During the term of the premium collection service under this agreement Plan Administrator will be responsible for determining and confirming eligibility for coverage under the plan(s) with respect to Qualified Beneficiaries and their dependents (if any), and completing the Premium Collection Plan Information Form(s) provided by BYC as well as:

- A. Providing all information concerning the amount and timing of premium payments with respect to each of the plans (including, but not limited to, the due dates for premium payments, open enrollment changes, identity of the plans, and premium amounts by plan, and premium amounts based on covered individuals [single, family, etc.], and all other information to BYC as BYC determines is reasonably necessary to facilitate the COBRA premium collection and transmittal services with respect to the plans.
- B. Reviewing each report and statement issued to Plan Administrator by BYC in connection with the premium collection service under this agreement. Plan Administrator shall be responsible for all errors in providing COBRA continuation coverage to the extent Plan Administrator, in reviewing the reports or statements issued by BYC knew, or on the basis of information reasonably available to Plan Administrator should have known, the information was inaccurate.
- C. Determining whether COBRA premium payments from Qualified Beneficiaries before the BYC Premium Collection Service effective date were paid in a timely fashion.
- D. Keeping COBRA continues covered during grace periods while awaiting reimbursement of premiums collected by BYC. Reimbursement of premiums may be less fees owed BYC by Plan Administrator.

## **SECTION 4. TERM OF AGREEMENT**

See Agreement for Compliance With COBRA. The Agreement for Compliance with COBRA and The Premium Collection Service Agreement shall be in force under the same service effective date and for the same period.

**THIS HIPAA BUSINESS ASSOCIATE AGREEMENT** (this "Agreement") is made as of \_\_\_\_\_ (the "Effective Date"), by and between \_\_\_\_\_ ("Health Care Provider") and **BY COBRA** ("HIPAA Business Associate") each individually a "Party" and together the "Parties."

## **BACKGROUND STATEMENTS**

- A. The purpose of this Agreement is to comply with the business associate requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the associated regulations (45 C.F.R. parts 142 and 160- 164, as currently drafted and subsequently updated or amended, the "HIPAA Privacy Rule"). Unless otherwise defined in this Agreement, capitalized terms shall have the meanings given in the HIPAA Privacy Rule.
- B. Health Care Provider and HIPAA Business Associate have entered into one or more agreements (collectively, the "Agreement") under which HIPAA Business Associate receives and uses Protected Health Information ("PHI") in the course of providing certain services Health Care Provider.
- C. Health Care Provider is a "Covered Entity" under the HIPAA Privacy Rule. The Agreement is therefore subject to the Business Associate requirements in the HIPAA Privacy Rule.
- D. The HIPAA Privacy Rule requires all Business Associates of Health Care Provider to agree in writing to certain mandatory terms and conditions relating to the Business Associates' use and disclosure of PHI received from Health Care Provider.

## **AGREEMENT**

The Parties hereby agree as follows:

### **Section 1. General Obligation.**

HIPAA Business Associate shall comply fully with all obligations imposed on Business Associates under the HIPAA Privacy Rule regarding HIPAA Business Associate's use, disclosure, or creation of PHI received from, or created or received by HIPAA Business Associate on behalf of Health Care Provider.

**Section 2. Scope of Permitted Uses and Disclosures.**

- 2.1** HIPAA Business Associate shall use and/or disclose PHI only as permitted or required by this Agreement or as otherwise required by law.
- 2.2** HIPAA Business Associate may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only if and to the extent directly related to, and necessary for, the performance of the Services for or on behalf of Health Care Provider. Disclosure of PHI to, and use of PHI by, subcontractors, agents, and other representatives is also subject to Section 5 below.
- 2.3** HIPAA Business Associate represents and warrants that it shall request from Health Care Provider no more than the minimum PHI necessary to perform the Services.
- 2.4** HIPAA Business Associate shall not use or disclose PHI in a manner (i) inconsistent with Health Care Provider's obligations under HIPAA, or (ii) that would violate the HIPAA Privacy Rule if disclosed or used in such a manner by Health Care Provider.

**Section 3. Safeguards for the Protection of PHI.**

- 3.1** HIPAA Business Associate represents and warrants that it shall implement and maintain commercially appropriate security safeguards to ensure that PHI is not used or disclosed by HIPAA Business Associate in violation of this Agreement.

**Section 4. Reporting and Mitigating the Effect of Unauthorized Uses and Disclosures.**

- 4.1** HIPAA Business Associate shall report in writing to Health Care Provider's Privacy Officer, as soon as practicable and in all events no later than 48 hours after HIPAA Business Associate obtains knowledge thereof, any use and/or disclosure of PHI that violates this Agreement.
- 4.2** HIPAA Business Associate shall establish procedures for mitigating, to the greatest extent possible, any deleterious effects arising from any improper use and/or disclosure of PHI, and shall implement all such procedures and all other reasonable mitigation steps requested by Health Care Provider.

**Section 5. Use by and Disclosure to Subcontractors, Agents, and Representatives.**

**5.1** Prior to disclosing any PHI to any subcontractor, agent, or other representative that is authorized to receive, use, or have access to PHI under the Agreement, HIPAA Business Associate shall require such person to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to HIPAA Business Associate under this Agreement. Such agreement shall identify Health Care Provider as a third-party beneficiary with rights of enforcement in the event of any violations.

**Section 6. Individual Rights.**

**6.1** Within fifteen (15) days of receiving a written request from Health Care Provider, HIPAA Business Associate shall provide to Health Care Provider all applicable information necessary to comply with the requirements of 45 C.F.R. § 164.528 regarding an individual's right to an accounting of disclosures of PHI.

**6.2** HIPAA Business Associate shall allow access to PHI by Health Care Provider or the individual to whom such PHI relates, at reasonable times and in a manner reasonably directed by Health Care Provider, in order to meet the individual access requirements under 45 C.F.R. § 164.524. 6.3 HIPAA Business Associate shall make any amendment(s) to PHI that Health Care Provider directs in order to meet the amendment requirements under 45 C.F.R. § 164.526.

**Section 7. Audit, Inspection and Enforcement.**

**7.1** From time to time upon reasonable notice, Health Care Provider may inspect the internal practices, facilities, systems, books, records, and policies and procedures of HIPAA Business Associate to monitor compliance with this Agreement. HIPAA Business Associate shall promptly remedy any violation of this Agreement found by Health Care Provider and shall certify the same to Health Care Provider in writing. The fact the Health Care Provider has the right to inspect HIPAA Business Associate's internal practices, facilities, systems, books, records, and policies and procedures, whether or not it exercises such right, shall not relieve HIPAA Business Associate of its responsibility to comply fully with this

Agreement. In addition, Health Care Provider's failure to detect any unsatisfactory practice does not constitute acceptance of such practice or a waiver of Health Care Provider's enforcement rights hereunder.

- 7.2.1** HIPAA Business Associate further agrees to make its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI available to the federal Department of Health and Human Services ("HHS"), the Office of Civil Rights ("OCR"), or its agents for the purposes of enforcing the provisions of this Agreement and the HIPAA Privacy Rule.

**Section 8. Term and Termination.**

- 8.1** **Term.** This Agreement shall become effective on the Effective Date and shall continue in effect while the Agreement remains in force and thereafter with respect to those obligations intended to survive the termination of this Agreement. The Agreement shall terminate (and so also this Agreement) in accordance with the termination provisions of the Agreement and this Section 8.

- 8.2** **Termination by the Health Care Provider.** Health Care Provider may immediately terminate the Agreement if Health Care Provider makes the determination that HIPAA Business Associate has breached a material term of this Agreement. Alternatively, in Health Care Provider's sole discretion, Health Care Provider may provide HIPAA Business Associate with written notice of the existence of the material breach and afford HIPAA Business Associate thirty (30) days to cure the material breach. In the event HIPAA Business Associate fails to cure the material breach within such time period, Health Care Provider may immediately terminate the Agreement. Health Care Provider may also report the material breach to the Secretary of HHS or OCR.

- 8.3** **Effect of Termination.** Upon termination of the Agreement, HIPAA Business Associate shall recover any PHI in the possession of its subcontractors, agents, or representatives. HIPAA Business Associate shall return to Health Care Provider or destroy all such PHI, plus all other PHI in its possession, and shall retain no copies. If HIPAA Business Associate believes that it is not feasible to return or destroy the PHI as described above, HIPAA Business Associate shall notify Health Care Provider in writing. The notification shall

include: (i) a statement that HIPAA Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. If Health Care Provider agrees in its sole discretion that HIPAA Business Associate cannot feasibly return or destroy the PHI, HIPAA Business Associate shall ensure that any and all protections, limitations, and restrictions contained in this Agreement will be extended to any PHI retained after the termination of the Agreement, and that any further uses and/or disclosures shall be limited to the purposes that make the return or destruction of the PHI infeasible.

**Section 9. Insurance and Indemnification.**

**9.1 Insurance.** (Address HIPAA liability and insurance coverage issues with your insurer to determine whether any special insurance requirements should be included here beyond what is in the Agreement.)

**9.2 Indemnification.** The Parties agree to indemnify, defend, and hold harmless each other and each other's respective employees, directors, officers, subcontractors, and agents from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs, or expenses (including without limitation reasonable attorneys' fees) suffered by the indemnified party arising from or in connection with any breach of this Agreement, or any negligent or wrongful acts or omissions in connection with this Agreement, by the indemnifying party or by its employees, directors, officers, subcontractors, or agents. The Parties' indemnification obligations shall survive the expiration or termination of the Agreement.

**Section 10 Miscellaneous.**

**10.1 Survival.** The respective rights and obligations of HIPAA Business Associate and Health Care Provider under the provisions of Sections 7, 8.3, 9, and 10 shall survive termination of the Agreement indefinitely.

**10.2 Amendments: Waiver.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

**10.3** **No Third-Party Beneficiaries.** Except as provided in Section 5.1, nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors and permitted assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

**10.4** **Notices.** Any notice to be given under this Agreement to a party shall be made via U.S. Mail, commercial courier, or hand delivery to such party at its address given below, and/or via facsimile to the facsimile telephone number listed below, or to such other address or facsimile number as shall hereafter be specified by notice from the Party. Any such notice shall be deemed given when so delivered to or received at the proper address.

**If to HIPAA Business Associate, to:**

**BY COBRA**  
16800 Dallas Parkway, Suite 120  
Dallas, Texas 75248  
Attention: Ronnye M. Medlen  
Phone: 972 248-7277  
Fax: 972 248-7872  
Email: r.medlen@bycobra.com

**If to Health Care Provider, to:**

**Company:** \_\_\_\_\_  
**Address** \_\_\_\_\_  
**City, State, Zip:** \_\_\_\_\_  
**Attention:** \_\_\_\_\_ **Title** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Fax:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**10.5** **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

**IN WITNESS WHEREOF,** each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(company)  
By: Brian Lee  
Print Name: BRIAN LEE  
Title: COUNTY JUDGE  
Date: 10-16-15

**BY COBRA**  
\_\_\_\_\_  
By: Ronnys M. Medlen  
Ronnys M. Medlen  
President  
Date: 10-13-15