

COBRA/CONTINUATION OF COVERAGE
ADMINISTRATIVE SERVICES AGREEMENT

This COBRA/Continuation of Coverage Administrative Service Agreement (“Agreement”) is made and entered into this _____ day of _____, 20____, between Avera Health Plans, Inc., a South Dakota corporation located at 5300 S. Broadband Ln., Sioux Falls, SD 57108 (“Avera Health Plans”), and _____ (“Employer”).

WHEREAS, Avera Health Plans provides group health insurance and third party benefit administration services; and

WHEREAS, the Employer offers an employee welfare benefit plan or plans for its employees; and

WHEREAS, Avera Health Plans and the Employer mutually desire that Avera Health Plans will provide administrative services for the purpose of the benefits continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) or applicable state continuation of coverage requirements to the employees of the Employer in accordance with the terms and conditions of this Agreement.

Now therefore, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. **PURPOSE.** This is an agreement between the parties relating to the provision of COBRA and applicable state continuation administrative services to the Employer. Pursuant to the terms of this Agreement, Avera Health Plans shall provide documents to Employer which will enable the Employer to initiate services. Services shall, however, only be provided by Avera Health Plans to the Employer upon a specific request for the services by the Employer. Employer must indicate on the Participation Agreement its intention to receive COBRA/Continuation of Coverage Administration Services in order for services to begin. The services provided shall include compliance with the COBRA/Continuation of Coverage requirements and will also include the administration of these requirements for applicable employee benefit plans of the Employer.

Section 2. **DEFINITIONS.** Whenever used in this Agreement, the following terms have the respective meanings set forth below, unless the context clearly requires otherwise, and when the defined meaning is intended, the term is capitalized:

Section 2.1 **Contract Year** shall mean the twelve-month period beginning on the date the agreement is to go into effect.

Section 2.2 Plan shall mean the employee benefit plans of an Employer to which COBRA/Continuation of Coverage laws apply.

Section 2.3 Employer shall mean the employer or association of employers who request that Avera Health Plans provide services to it under this Agreement.

Section 2.4 Plan Sponsor shall mean an employer or employer-designated entity that is responsible for the establishment and maintenance of the Plan.

Section 2.5 Qualified Beneficiary shall have the meaning attributed to that term under the Consolidated Omnibus Budget Reconciliation Act of 1985 or applicable state law regarding continuation of coverage benefits.

Section 2.6 Qualifying Event shall have the meaning attributed to that term under the Consolidated Omnibus Budget Reconciliation Act of 1985 or applicable state law regarding continuation of coverage benefits.

Section 3. DUTIES OF AVERA HEALTH PLANS.

Section 3.1 COBRA/Continuation of Coverage Administration. With respect to every Plan, Avera Health Plans shall administer the applicable continuation of benefits requirements of COBRA or State Continuation of Coverage regulations. Avera Health Plans shall provide such services in a manner which complies with the requirements of applicable benefits continuation laws. Avera Health Plans shall not, for any purpose, be deemed to be a “Fiduciary” (as defined in ERISA or the Internal Revenue Code) of the Plan or the sponsor of the Plan. The sole function of Avera Health Plans is to provide administration services and Employer agrees that Avera Health Plans shall have no liability for the funding of participant premiums. Specifically, Avera Health Plans shall provide the following services with respect to each Plan according to applicable law:

3.1.1 General COBRA Notification. Employer shall be responsible for providing the COBRA General Notice to inform newly hired employee(s) of their rights under COBRA;

3.1.2 Election Notices. When a qualifying event occurs and Avera Health Plans is informed, Avera Health Plans shall advise qualified beneficiaries in writing of their rights under current laws and regulations relative to continued coverage under the Employer’s group health plan(s);

3.1.3 Initial Election Period. Avera Health Plans shall track the time frame described by applicable law within which a Qualified Beneficiary must elect continuation coverage;

3.1.4 Payment Coupons. Avera Health Plans shall issue payment coupons and instructions for making the required premium payments and maintaining coverage, for every Qualified Beneficiary who elects the continuation of coverage under applicable law within the prescribed time frame;

3.1.5 Premium Collection. Avera Health Plans shall receive, account for, and appropriately distribute the payments received from the Qualified Beneficiary. In the event that incomplete or incorrect remittances are submitted to Avera Health Plans, Avera Health Plans shall contact the Qualified Beneficiary in an effort to correct any error in the remittance;

3.1.6 Forms. Avera Health Plans shall provide Employer with forms to be used to notify Avera Health Plans of Qualifying Events;

3.1.7 Rate Change Notices. Avera Health Plans shall notify Qualified

Beneficiaries of any changes advised by the Employers or health care reimbursement entities to the amount of the premium which the Qualified Beneficiaries must pay in order to maintain their coverage under a Plan;

3.1.8 Open Enrollment Notices. Employer shall notify Qualified Beneficiaries as required in the event that their continuation options are modified as a result of an open enrollment process of an Employer;

3.1.9 Intent to Cancel Notices. In the event that a Qualified Beneficiary fails to remit a required premium payment by its due date, Avera Health Plans shall notify the Qualified Beneficiary of his or her failure to remit, the consequences of such failure, and the final date by which payment must be received in order to continue his or her COBRA coverage;

3.1.10 Service Telephone Line. Avera Health Plans shall maintain a telephone number and a staff of service representatives to assist Employers and Qualified Beneficiaries in determining their responsibilities, rights, and current status under applicable law.

Section 3.2 Continuation Information and Administrative Forms. Avera Health Plans shall prepare, and distribute such information materials as are considered by it to be necessary in order to describe to Employers and Qualified Beneficiaries their rights and obligations under COBRA/Continuation of Coverage. Avera Health Plans shall also prepare such notices and administration forms as are necessary to comply with the requirements of COBRA/Continuation of Coverage and applicable state law.

Section 3.3 Reports and Records.

3.3.1 Notification/Continuation Records. For each Employer and for each Qualified Beneficiary, Avera Health Plans shall maintain records of notifications sent, continuation elections made, and premiums received.

3.3.2 Financial Reports. Avera Health Plans shall prepare for each Employer and submit as necessary or requested, year-to-date financial information for the Employer's use in preparation of any and all reports required by the Internal Revenue Service, the Department of Labor and any other Federal or State agencies.

Section 4. DUTIES OF EMPLOYER.

Section 4.1 Eligibility and Providing Information.

4.1.1 The Employer shall advise Avera Health Plans of the following events within thirty (30) days of the qualifying event date or the last date of coverage, whichever is later, of said event(s):

- (a) Death of a covered employee;
- (b) Termination of a covered employee (for reasons other than gross misconduct) or reduction in the employee's hours;

1)The Employer shall be solely responsible for determining whether or not the employee has been terminated for gross misconduct, as that term is defined by COBRA or applicable state continuation of coverage requirements;

- (c) Covered employee becoming entitled to benefits under Title XVIII of

the Social Security Act (Medicare);

4.1.2 The employee is responsible for providing notice to the Employer within 60 days of the following events:

- (a) Divorce/legal separation of covered employee;
- (b) Dependent children who cease to be covered as a “dependent” under the terms of the group health plan(s);

4.1.3 Eligibility Determinations. Upon request for services under this Agreement by an Employer, the Employer shall immediately notify Avera Health Plans using the applicable form of all persons entitled to continuation coverage under applicable law, including in its notification information with respect to persons currently continuing coverage under the Plan to allow Avera Health Plans to assume responsibility for the future administration of the continuation of said coverage. To the extent that the Employer fails to provide accurate information concerning or to notify Avera Health Plans using the applicable form of the existence of persons currently continuing coverage or of new Qualified Beneficiaries, or in the event that the Employer does not provide adequate notification, Avera Health Plans shall not be responsible for the failure by the Employer to notify Avera Health Plans.

4.1.4 Failure to Provide Information. In the event the Employer fails to provide Avera Health Plans with accurate information required for Avera Health Plans to provide the services to be rendered herein, on a timely basis, the Employer agrees to indemnify, hold harmless, and defend Avera Health Plans from and against any and all liabilities, losses, damages, claims, lawsuits, causes of action, costs and expenses that may be incurred by Avera Health Plans in connection with the failure of the Employer to provide Avera Health Plans with accurate information on a timely basis necessary to carry out its obligations under this Agreement, provided that Avera Health Plans’ action or failure to act in response to such lack of notice was not malicious or grossly negligent. The Employer further agrees to inform Avera Health Plans of any changes to the benefit plan at any time to ensure proper billing.

Section 5. FEES.

Section 5.1 Compensation. To compensate Avera Health Plans for providing its services hereunder, the Employer agrees to pay to Avera Health Plans the following amount: \$ No Fee.

5.1.1 Additional Fees. Fees for services rendered by Avera Health Plans in connection with arbitration or litigation concerning the continuation of benefits under a Plan shall be paid to Avera Health Plans by the Employer pursuant to a separate written agreement between the Employer and Avera Health Plans. Unless the parties enter into such an agreement, Avera Health Plans is not required to provide any services to a Employer in connection with the arbitration or litigation.

Section 6. ADMINISTRATION RECORDS. Avera Health Plans agrees that all forms, lists of names, journals, ledgers, and other records incidental to the administration of this Agreement shall remain the property of the Employer to whom services have been provided by Avera Health Plans. As such, in the event of the termination of this Agreement or the termination of services to an Employer under this Agreement all such records shall be returned to the Employer. Avera Health Plans shall have the right to retain copies of such property and records as it deems necessary.

Section 7. DURATION AND TERMINATION.

Section 7.1 Term. This Agreement shall become effective as of the date stated in the opening paragraph and shall continue in full force and effect for a twelve (12)-month period. Thereafter, except as provided in Section 8, this Agreement shall automatically renew for additional and successive twelve-month terms unless either party gives at least thirty (30) days advance written notice by certified mail to the other party of its intent to terminate this Agreement on the anniversary date next following delivery of such notice.

Section 7.2 Termination. Either party may terminate this Agreement immediately upon written notice in the event of (a) the bankruptcy, insolvency or liquidation of the other party; (b) the commission by the other party of any breach of this Agreement or any act of fraud, willful misconduct or bad faith in connection with the performance of its duties under this Agreement with Avera Health Plans; (c) upon the effective date of the cancellation of the Employer's Administrative Services Only agreement with Avera Health Plans Benefit Administrators; or (d) upon the effective date of the cancellation of the Employer's Participation Agreement.

Section 7.3 Employer hereby agrees that all administrative procedure manuals, data processing systems, computer programs, notice forms, and election forms are the sole property of Avera Health Plans and that Employer shall have no right to use these materials following the termination of this Agreement.

Section 8. GENERAL PROVISION.

Section 8.1 Arbitration. In the event of any dispute under this Agreement, the parties agree to binding arbitration in Minnehaha County, South Dakota, in accordance with the Commercial Arbitration Rules of the American Arbitration Association and with discovery being governed by the Federal Rules of Civil Procedure. Each party will name one arbitrator, and the arbitrators so chosen will name a third neutral arbitrator. Judgment upon the award rendered by the arbitrators may be entered into the judgment docket of any court having jurisdiction thereof. The parties to it shall share the cost of arbitration equally. Each party shall be solely responsible for its attorneys' fees, if any. The obligation set forth in this section shall survive the termination of this Agreement.

Section 8.2 Assignment. This Agreement may not be assigned by either party without the written consent of the other party.

Section 8.3 Governing Law. This Agreement shall be construed consistent with federal law and state law including applicable provisions of the Internal Revenue Code and the regulations of the United States Departments of Labor and Treasury. Subject to the foregoing, questions of construction and interpretation of this Agreement shall be governed by the laws of the State of South Dakota.

Section 8.4 Entire Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to its subject matter and supersedes all prior agreements, representations and understandings between any of the parties hereto with respect to the subject matter of this Agreement.

Section 8.5 Severability. If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

In witness whereof the parties hereto have caused the execution of this Agreement the day and year first above written.

EMPLOYER

AVERA HEALTH PLANS, INC.

By: _____

By: _____

Name: _____
(please print name)

Name: _____
(please print name)

Title: _____

Title: _____

Date: _____

Date: _____