

HEALTH BENEFITS CONTINUATION COVERAGE
ADMINISTRATIVE SERVICES AGREEMENT

This Agreement made as of _____ by and between Health Care Service Corporation, a Mutual Legal Reserve Company ("**HCSC**") and _____ (**Employer**)

WITNESSETH AS FOLLOWS:

WHEREAS, HCSC provides certain administrative services as they relate to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**") continuation of coverage provisions (*hereinafter referred to as "Health Benefits Continuation Coverage"*); and

WHEREAS, the Employer desires to retain HCSC to provide certain administrative services with respect to the Health Benefits Continuation Coverage.

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, the parties hereby agree as follows:

I. DEFINITIONS

In the case that there is a conflict between the definitions set forth below and those found under the Consolidated Omnibus Budget Reconciliation Act of 1985 or under the Internal Revenue Code of 1986, and the regulations thereunder, as may be amended, the statutory definitions shall control.

1.1. "**Health Benefits Continuation Coverage**" shall mean the administrative services HCSC offers to assist the Employer in fulfilling its responsibilities under the Consolidated Omnibus Budget Reconciliation Act of 1985.

1.2. "**COBRA**" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as may be amended.

1.3. "**Continuation of Coverage Provisions**" shall mean continuation of group health care coverage provisions mandated by COBRA.

1.4. "**Group Health Plan**" shall mean an employee welfare benefit plan that is a group health plan within the meaning of Section 4980B(g)(2) of the Internal Revenue Code of 1986.

1.5. "**Covered Employee**" shall mean an individual who is (*or was*) provided coverage under a Group Health Plan by virtue of the individual's employment or previous employment with an employer.

1.6. "**Qualified Beneficiary**" shall mean:

(A) In general, the term "**Qualified Beneficiary**" shall mean, with respect to a Covered Employee under a Group Health Plan, any individual who, on the day before the qualifying event for that employee, is a beneficiary under the Group Health Plan -

- (i) as the spouse of the Covered Employee, or
- (ii) as the dependent child of the Covered Employee.

(B) In the case of a qualifying event which is caused by termination (*other than by reason for such employee's gross misconduct*), or reduction of hours, of the Covered Employee's employment, the term "Qualified Beneficiary" includes the Covered Employee.

1.7. **"Qualifying Event"** shall mean, with respect to any Covered Employee, any of the following events which, but for the continuation coverage required, would result in the loss of coverage of a Qualified Beneficiary:

- (A) the death of the Covered Employee;
- (B) The termination (*other than by reason of such employee's gross misconduct*) or reduction of hours, of the Covered Employee's employment;
- (C) The divorce or legal separation of the Covered Employee from the employee's spouse;
- (D) The Covered Employee becoming entitled to benefits under Title XVIII of the Social Security Act;
- (E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the Group Health Plan; or
- (F) A determination made under the Social Security Act that the Covered Employee is disabled.

1.8. **"Applicable Premium"** shall mean the amount a Group Health Plan will require a Qualified Beneficiary to pay, for any period of COBRA continuation coverage, that does not exceed one hundred and two percent (102%) of the applicable premium for that period or does not exceed one hundred and fifty percent (150%) of the applicable premium after the 18th month of coverage for Qualified Beneficiaries eligible for extended coverage due to disability. The applicable premium is defined in Section 4980B(f)(4) of the Internal Revenue Code of 1986.

1.9. **"Employer"** shall mean the individual proprietor, partnership or corporation identified in the Group Health Plan and any predecessor thereto, and any corporation with which the Employer shall be merged or consolidated, or any corporation resulting in any manner from a reorganization of the Employer or any individual, firm or corporation which shall assume the Health Benefits Continuation Coverage obligations of the Employer.

1.10. **"Plan Administrator"** shall have the meaning given the term "administrator" by Section 3(16)(a) of the Employee Retirement Income Security Act of 1974.

II. APPOINTMENT

The Employer hereby retains and appoints HCSC to provide services as hereinafter described in connection with the Health Benefits Continuation Coverage.

III. SERVICES TO BE PROVIDED BY HCSC

During the term of this Agreement, HCSC will perform such services as are set forth in Exhibit I attached hereto and made a part hereof.

IV. RESPONSIBILITIES OF THE EMPLOYER

A. The Employer retains full and final authority and responsibility with respect to compliance with COBRA Continuation of Coverage Provisions and except as provided in Article V., paragraph E, the Employer shall have the sole responsibility for and shall bear the entire cost of compliance with all federal, state and local rules and laws including, but not limited to: any licensing; filing; reporting and disclosure requirements as they may apply to its Health Benefits Continuation Coverage or COBRA Continuation Provisions; and all costs, expenses and fees relating thereto.

B. Except to the extent that Article V, paragraph D applies, the Employer shall undertake the defense of any action against it and/or HCSC and shall be responsible for the costs of defense; provided, however, that HCSC shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of the Employer.

C. It is understood by the Employer that COBRA imposes penalties on an employer or Plan Administrator who fails to accurately comply with the COBRA Continuation of Coverage Provisions. It is further understood by the Employer that HCSC shall in no way be responsible for any said penalties nor does HCSC agree to be liable for damages resulting from any said penalties which may be imposed on the Employer or Plan Administrator for non-compliance of COBRA Continuation of Coverage Provisions. The penalties may include, but are not limited to: loss of federal tax deduction for expenses paid or incurred for any Group Health Plan maintained by the Employer; failure to notify the employee of continuation rights, either initially or upon a Qualifying Event resulting in a penalty payment of up to \$100.00/ per Qualified Beneficiary per day of delay; and highly compensated individuals who participate in a Group Health Plan for which the Employer fails to follow the COBRA requirements may not be permitted to exclude from income the amount contributed by the Employer in his or her behalf for such coverage.

D. The Employer hereby agrees to identify the employee who shall act as the sole contact between the Employer and HCSC in regard to COBRA Health Benefits Continuation Coverage matters under this Agreement.

E. The Employer hereby agrees to be solely responsible for providing the initial notice regarding Health Benefits Continuation Coverage under COBRA and for providing and updating their Summary Plan Descriptions regarding COBRA.

F. Unless an insurance policy issued by HCSC is in force, the Employer understands that HCSC does not insure or underwrite the liability of the Employer for the Health Benefits Continuation Coverage it offers pursuant to COBRA. The Employer retains the ultimate responsibility for claims made under the Health Benefits Continuation Coverage and all expenses incident to the Health Benefits Continuation Coverage, except as specifically assumed in this Agreement by HCSC.

G. Except to the extent that Article V, paragraph D applies, the Employer agrees to indemnify and hold harmless HCSC and its directors, officers and employees against any and all loss, liability, damages, penalties and expenses, including attorneys' fees, or other cost or obligation resulting from or arising out of claims, lawsuits, demands, settlements or judgments brought against HCSC in connection with the administration of the Health Benefits Continuation Coverage including, but not limited to: HCSC's performance of this Agreement or any action taken by HCSC pursuant to the Employer's written direction; any claim based upon the disclosure of any information regarding a Qualified Beneficiary by HCSC to the Employer; in connection with a claim for benefits under the Health Benefits Continuation Coverage; with respect to the Agreement concerning compliance of the COBRA Continuation of Coverage Provisions including, but not limited to, any and all penalties which can be imposed thereunder.

H. The Employer shall furnish on a timely basis to HCSC certain information concerning the Employer's Group Health Plan descriptions and employees and dependents covered under the Health Benefits Continuation Coverage including Qualified Beneficiaries entitled to the Health Benefits Continuation Coverage as may from time to time be required by HCSC for the performance of its duties including, but not limited to, the following:

1. All documents by which the Health Benefits Continuation Coverage is established and any amendments or changes to the Health Benefits Continuation Coverage as may from time to time be adopted including thirty (30) days prior written notification to HCSC when the Employer plans a reduction in force, lay-off, strike, or shutdown or filing for bankruptcy, or makes changes to any of the following: its Health Benefits Continuation Coverage; benefit pricing; or benefit carriers.

2. All data as may be required by HCSC regarding the Qualified Beneficiaries who are to be covered under this Agreement.

- a. Such data may include, without limitation, a list of Qualified Beneficiaries who are to be covered under this Agreement, and completed Health Benefits Continuation Coverage applications.

Further, the Employer will notify HCSC of the effective date of coverage for all Qualified Beneficiaries who are to be covered under this Agreement. Clerical errors or delays in keeping or reporting data relative to coverage under this Agreement will not invalidate coverage which would otherwise be validly in force or continue coverage which would otherwise validly terminate. However, the Employer is liable for any benefits paid for a terminated Qualified Beneficiary if the Employer had not timely notified HCSC as required by COBRA of such Qualified Beneficiary's termination or ineligibility under COBRA.

b. All such notification by the Employer to HCSC must be furnished on forms or in a format approved by HCSC and must include all information reasonably required by HCSC to effect such changes.

3. Such information as to Health Benefit Continuation Coverage benefits as will enable HCSC to accurately prepare any reports required under this Agreement. The Employer, furthermore, shall use its best efforts to cooperate with and assist HCSC as applicable, in the performance of its duties hereunder.

V. RESPONSIBILITIES OF HCSC

A. HCSC is empowered to act on behalf of the Employer in connection with the Health Benefits Continuation Coverage only as expressly stated in this Agreement or as mutually agreed to in writing by the parties hereto.

B. HCSC shall have no responsibility for the compliance of the Health Benefits Continuation Coverage or COBRA Continuation of Coverage Provisions with any applicable federal, state or local rule or law.

C. HCSC shall, to the extent possible, advise the Employer of any legal actions against it or the Employer which involve the COBRA Continuation of Coverage Provisions or the obligations of the Employer or HCSC under this Agreement. HCSC, provided no conflicts of interest exist, shall fully cooperate with the Employer, at no cost to HCSC in the Employer's defense of any action arising out of matters related to the Health Benefits Continuation Coverage, COBRA Continuation of Coverage Provisions or this Agreement.

D. HCSC hereby agrees to assume full responsibility for timely and complete notice to Qualified Beneficiaries of their respective rights under COBRA provided that the Plan Administrator has given timely and complete notice of the Qualifying Event to HCSC. Notification shall be made in accordance with the notice and time requirements specified in the Consolidated Omnibus Budget Reconciliation Act of 1985. Upon notice of a Qualifying Event from the Plan Administrator, HCSC will provide a notification package to the Qualified Beneficiary.

E. HCSC hereby agrees to indemnify and hold harmless the Employer and its directors, officers and employees against any and all claims, lawsuits, judgments, costs, penalties and expenses with respect to this Agreement resulting from or arising out of any acts of HCSC or its employees which have been determined to be in breach of this Agreement, the Employer's written direction, the result of gross negligence, dishonesty, fraud, or a criminal act as determined by a court of competent jurisdiction.

F. HCSC shall be responsible for expenses arising out of its performance of the services described in Exhibit I.

VI. TERM AND TERMINATION OF AGREEMENT

A. This first Agreement Period shall be the period from the effective date of this Agreement and shall renew automatically for successive Agreement Periods of one year, unless discontinued as provided below. Either party may terminate this Agreement without cause by giving at least ninety (90) days prior written notice to the other party. In the event of such termination HCSC agrees to use its best efforts to assist the Employer in notifying Qualified Beneficiaries, transferring data, files, and all other relevant information to the Employer or its delegate. The Employer will indemnify and hold HCSC harmless from any and all claims, cost and expenses, including, but

not limited to, reasonable attorneys' fees arising from the termination of this Agreement. Unless agreed otherwise in writing by the parties, in the event of such termination, the Employer shall immediately have complete responsibility for current and future COBRA Qualified Beneficiaries Applicable Premium billing and collection services and all other responsibilities contained in this Agreement.

B. In the event that the Employer ceases to have an obligation under COBRA to provide Health Benefit Continued Coverage to all covered employees and all Qualified Beneficiaries, the Employer will provide HCSC with at least ten (10) days advance written notice of the cessation of its obligations. Upon receipt of such notice, HCSC at its sole option, has the right to terminate this Agreement upon ten (10) days written notice to the Employer. In the event of such termination by HCSC, the Employer shall immediately have complete responsibility for current and future COBRA Qualified Beneficiaries Applicable Premium billing and collection services and all other responsibilities contained in this Agreement. Further, in the event of such termination, the Employer agrees to notify all Qualified Beneficiaries. The Employer will indemnify and hold HCSC harmless from any and all claims, costs and expenses, including, but not limited to, reasonable attorneys' fees arising from the termination of this Agreement or denial of COBRA Health Benefits Continuation Coverage claims pursuant to this Agreement.

VII. RELATIONSHIP OF PARTIES

A. HCSC is an independent contractor with respect to the Employer, and nothing in this Agreement shall create, or be construed to create, the relationship of employer and employee between HCSC and the Employer, nor shall the Employer's agents, officers or employees be considered or construed to be considered employees of HCSC for any purpose whatsoever.

B. It is understood and agreed that nothing contained in this Agreement shall confer or be construed to confer any benefit on persons who are not parties to this Agreement including, but not limited to, employees of the Employer and their dependents.

C. The Employer acknowledges that this Agreement is separate and distinct from any other agreement(s) between parties regarding certain administrative services or policies of insurance issued to said Employer. All amounts due hereunder shall be in addition to the amounts or premiums due HCSC under any such agreement(s).

VIII. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Illinois.

IX. AMENDMENTS

This Agreement may be amended by mutual agreement of the parties hereto at any time, but, to be effective, any amendment hereto must be in writing and signed by an authorized representative of each party.

X. LIMITATIONS

No civil action shall be brought to recover under this Agreement after the expiration of three (3) years from the date the cause of action accrued.

XI. SIGNATURES

Each party to this Agreement represents and warrants that the signatory on behalf of such party is duly authorized and empowered to execute this Agreement and bind such party to the terms and provisions hereof.

X. NOTICES

All notices, directions or requests under this Agreement shall be in writing and shall either be delivered or mailed to the address as follows:

Group Name _____ **Health Care Service Corporation,
A Mutual Legal Reserve Company**
Address: _____ P.O. Box 1180
City, State: _____ Marion, IL 62959-7680
Zip code: _____
Attn: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year above written

Group Name _____ **Health Care Service Corporation,
A Mutual Legal Reserve Company**
Signature: _____ Signature: _____
Printed Name: _____ Printed Name: _____
Title: _____ Title: _____
Date: _____ Date: _____

EXHIBIT I

HCSC will perform the following services:

1. HCSC will provide notice to Qualified Beneficiaries of their COBRA rights.
2. HCSC will, within the time frames required by COBRA, produce and mail monthly COBRA premium bills for the Qualified Beneficiaries.
3. HCSC will post premium payments received.
4. HCSC will produce and mail late and/or insufficient premium notices within the time frames required by COBRA, when appropriate, that advise Qualified Beneficiaries that they are in jeopardy of losing their Health Benefits Continuation Coverage.
5. Where premiums are not paid in full or in a timely fashion as defined by COBRA, HCSC will produce and mail a cancellation letter. Unless otherwise agreed to in writing by the parties, HCSC will deem payments that are less than 90% of the premium to be insufficient and cancel coverage.
6. HCSC will send out conversion letters 90 days prior to the end of eligibility period.
7. HCSC will respond to written or phone inquiries relating to COBRA.
8. HCSC will, within 14 days after receipt of the enrollment form from the Qualified Beneficiary, produce and mail the initial COBRA benefit continuation billing.
9. HCSC will, upon receipt of an enrollment form and initial premium payment, update membership for that Qualified Beneficiary. Once premiums have been received, claims will be processed through normal claims processing channels.
10. HCSC will on a monthly basis furnish a check payable to the Employer in the amount of COBRA premiums received less COBRA Administration fees described in Exhibit II. A detailed report of premiums collected broken down by individual carrier(s) will accompany this remittance.

EXHIBIT II

Administrative Fee

The Employer will pay a separate and distinct Administrative Fee to HCSC as payment for the Administrative Services HCSC provides under this Agreement. This Administrative Fee will be due and payable as follows:

- (i) The Employer will pay HCSC Seventy-Five Dollar (*\$75.00*) monthly administrative fee. The sum of Seventy-Five Dollars (*\$75.00*) will be deducted from the monthly remittance to the Employer pursuant to Exhibit I, paragraph 10. If the Seventy-Five Dollar (*\$75.00*) fee exceeds the amount of premium received, the excess will be due and payable to HCSC upon receipt of a monthly invoice.
- (ii) The Employer will pay HCSC a sum of Ten Dollars (*\$10.00*) per Qualified Beneficiary on a monthly basis as the payment for the billing and Applicable Premium collection services HCSC provides under this Agreement. The sum of Ten Dollars (*\$10.00*) per Qualified Beneficiary per month will be deducted from the monthly remittance to the Employer pursuant to Exhibit I, paragraph 10. If the Ten Dollars (*\$10.00*) per Qualified Beneficiary per month fee exceeds the amount of premium received, the excess will be due and payable to HCSC upon receipt of a monthly invoice.
- (iii) The Employer will pay HCSC a sum of Ten Dollars (*\$10.00*) per Qualified Beneficiary for each notice to Qualified Beneficiaries of their COBRA rights. The sum of Ten Dollars (*\$10.00*) per Qualified Beneficiary notice will be deducted from the monthly remittance to the Employer, pursuant to Exhibit I, paragraph 10. If the Ten Dollars (*\$10.00*) per Qualified Beneficiary notice fee exceeds the amount of premium received, the excess will be due and payable to HCSC upon receipt of a monthly invoice.
- (iv) The Employer will pay HCSC a sum of One Hundred Dollars (*\$100.00*) per hour for any system programming costs associated with non-standard administration services. The sum of One Hundred Dollars (*\$100.00*) per hour will be deducted from the monthly remittance to the Employer pursuant to Exhibit I, paragraph 10. If the One Hundred Dollars (*\$100.00*) per hour fee exceeds the amount of premium received, the excess will be due and payable to HCSC upon receipt of a monthly invoice.