



CONEXIS

DIRECT CLIENT ADMINISTRATIVE SERVICES AGREEMENT

Client's Name ("Client"): _____

Client has requested that CONEXIS Benefits Administrators, L.P. ("CONEXIS") its parent and affiliates should provide administrative services as described in this Administrative Services Agreement ("Agreement") for certain employee Benefit Plans ("Benefit Plans") maintained by Client. In consideration of the mutual promises contained in this Agreement, the sufficiency of which is hereby acknowledged, Client and CONEXIS ("Parties") agree as follows:

SECTION 1. Introduction

1.1 Effective Date and Term: This Agreement is effective 1, 20 ("Agreement Effective Date") upon being signed ("Executed") by CONEXIS and Client and remains effective until terminated as set forth herein.

1.2 Fee Schedules and Service Appendices: Each attached Fee Schedule and accompanying Service Appendix ("Fee Schedule / Service Appendix") that is specifically incorporated into and made a part of this Agreement constitutes part of this Agreement. Each Fee Schedule / Service Appendix will have a Service Fees Guarantee Period date and each Fee Schedule / Service Appendix can be terminated independently of the other appendices and the Agreement.

1.3 Relationship of the Parties: Client and CONEXIS are independent contractors with respect to each other and nothing in this Agreement will be deemed to create an employee/employer relationship; a partnership; or joint venture between Client and CONEXIS. CONEXIS' only obligation under this Agreement is to provide the Services set forth herein to Client and nothing in this Agreement shall be deemed to confer responsibility on CONEXIS to any person covered under the Benefit Plans, the Covered Employees ("Participants").

SECTION 2. Client Duties

2.1 Benefit Plans: Client has sole responsibility and liability for: (i) establishment and operation of the Benefit Plans, (ii) construing and interpreting the provisions of the Benefit Plans and (iii) deciding all questions of fact arising under the Benefit Plans except as otherwise specifically delegated to CONEXIS in the Fee Schedule/Service Appendix. Client shall not represent to Participants or to any third party that CONEXIS is the "Plan Administrator" or "Named Fiduciary" as defined by ERISA, whether or not ERISA is applicable. It is Client's sole responsibility to ensure the Benefit Plans comply with all applicable laws and regulations, and CONEXIS' provision of services under this Agreement does not relieve Client of this obligation or resulting liability related to the Benefit Plan's non-compliance. Client has the sole responsibility to pay any fee or penalty arising from the Benefit Plans that is assessed by the Internal Revenue Service, the Department of Labor, and/or other federal, state, or local governmental agencies.

2.2 Service Fees: Service Fees ("Service Fees") shall be assessed for each month during which services are performed and the CONEXIS Service Fee Invoice will be distributed by the 7th business day of the following month. Payment of the Service Fee Invoice is due upon receipt of the invoice and considered past due if payment is not received after 30 calendar days from date of invoice. Any unpaid past due Service Fees not reasonably disputed are subject to interest not to exceed 1.5% per month, (18% per annum). A \$35.00 fee will be charged for all payments returned Not Sufficient Funds ("NSF").

If Client reasonably and in good faith disputes any charge or amount on any invoice and such dispute cannot be resolved within thirty (30) days ("Dispute Period") through good faith discussions between the Parties, Client shall pay the amounts due under this Agreement within five (5) business days after the end of the Dispute Period. An amount will be considered disputed in good faith if (i) Client delivers a written statement to CONEXIS on or before the past due date of the invoice, describing in detail the basis of the dispute and the amount being withheld by Client, (ii) such written statement represents that the amount in dispute has been determined after investigation of the facts and that such disputed amount has been determined in good faith, and (iii) all undisputed amounts due from Client are paid in accordance with the terms of this Agreement. Disputed amounts shall not be considered past due during the Dispute Period and the five (5) day period following the end of the Dispute Period. Invoices for all Active Accounts will be generated no later than the 7th business day after the last business day of the previous month. If any amounts owed to CONEXIS under this Agreement become Past Due as set forth herein, Client acknowledges and agrees that CONEXIS may suspend its performance hereunder during any portion of the term that such amounts owed by Client hereunder are past due and/or terminate this Agreement for failure to make payments as required herein as set forth in Section 4.9 herein.

CONEXIS may also change the service charges and or services as of the date any change is made in postal rates or to law or regulations to the extent such change imposes duties or obligations on **CONEXIS** or requires **CONEXIS** to carry out its obligations in a manner not otherwise contemplated by this **Agreement** in force at the time of such change.

Sixty (60) days prior to the expiration of any Service Fees Guarantee Period, as noted on the appropriate Fee Schedule, **CONEXIS** may, at its sole discretion, revise the **Service Fees** by providing **Client** written notice of such changes. Service Fee Guarantee Periods are only effective with fully **Executed Services Agreements**. In addition, **Service Fees** may be revised at any time, if **Client** makes changes to the **Benefit Plans** (regardless of reason) that materially revise the nature or volume of the services contemplated by this **Agreement** and/or the increase of pass through fees from third party service providers to **CONEXIS**.

2.3 Payments to CONEXIS: Notwithstanding any provision herein to the contrary, **Client** and **CONEXIS** agree that any funds submitted by **Client** or any other individual or entity to **CONEXIS** in accordance with this **Agreement** do not include participant's salary reductions. **Client** further understands that **CONEXIS** does not hold any funds submitted to **CONEXIS** by **Client** in a trust as that term is contemplated by ERISA. **Client** warrants that: (i) neither it nor any of its employees, directors, representatives, fiduciaries, **Benefit Plans** (or any entity performing services for **Client** or such **Plans**), any of its predecessors, successors or assigns have represented or shall represent to any **Participant** or beneficiary of the **Benefit Plans** that a separate account, fund, or trust is being held on behalf of the **Benefit Plans** that may be used to provide or secure benefits under the **Benefit Plans**; (ii) **Client** shall advise the **Participants** and beneficiaries of the **Benefit Plans** that the benefits under the **Benefit Plans** shall at all times be paid out of the general assets of **Client**. Nothing herein prevents **CONEXIS** from depositing any such amounts received from **Client** into a **CONEXIS**-owned interest bearing account and from retaining such interest.

2.4 Furnish Information to CONEXIS: **Client** shall furnish to **CONEXIS** the information reasonably determined by **CONEXIS** to be necessary to fulfill its duties, including but not limited to, quarterly updates of employee/**Participant** headcount to the extent that such headcount is applicable for calculating **Service Fees** and such information shall be provided in a mutually agreeable format. **Client** shall furnish such headcount within 10 business days of the beginning of each calendar quarter with the corresponding increase/decrease applicable for that quarter. **Client** understands and acknowledges that **CONEXIS** will operate on the assumption that the information provided by **Client** or its designee is accurate and complete and is not liable and will be indemnified and held harmless in accordance with Section 2.5 against errors resulting from inaccurate and/or untimely information provided by **Client** or its designee. **Client** agrees that **CONEXIS** may assess a reasonable additional fee for costs, (e.g. postage and related labor costs) incurred by **CONEXIS** as reasonably necessary to take corrective action due to inaccurate and/or untimely information received from **Client** or its designee.

2.5 Indemnify CONEXIS: **Client** agrees to defend, indemnify and hold harmless **CONEXIS**, its officers, directors and employees from and against all losses, liabilities, damages, expenses including reasonable attorneys' fees ("Losses"), resulting from any third party demand, judgment, settlement agreement or lawsuit arising from **CONEXIS'** performance under this **Agreement**, including without limitation, claims arising from actions taken by **CONEXIS** pursuant to **Client's** express written instructions except to the extent of **CONEXIS'** negligence or willful misconduct. The foregoing indemnification right is contingent upon **CONEXIS** satisfying Section 4.17 herein.

SECTION 3. CONEXIS' DUTIES

3.1 Recordkeeping: Each Party shall maintain the usual and customary records related to its obligations under this **Agreement** as required under applicable law. **CONEXIS** will deliver records held by **CONEXIS** that relate to administration of the **Benefit Plans** to **Client** or its designee within thirty (30) days of receiving **Client's** written request for the records. **Client** shall be required to pay **CONEXIS'** reasonable charges for transportation, for preparation of such data in formats other than **CONEXIS'** standard, and for duplication of such records.

3.2 Audit by Client: **Client** may perform one audit per year of the records specifically related to **CONEXIS'** duties under this **Agreement** after providing thirty (30) days prior written notice to **CONEXIS**. No such Audit shall last more than five (5) business days. For reasonable cause in unusual circumstances, **Client** may perform additional audits as needed with the understanding that **Client** will bear the full cost of such audits. **Client's** auditor may perform audits provided such auditor signs a confidentiality **Agreement** acceptable to **CONEXIS** and is a **CONEXIS'** approved auditor. Audits must be performed during **CONEXIS'** standard business hours. **CONEXIS** will provide reasonable assistance and information to the auditors and **Client** shall reimburse **CONEXIS** for **CONEXIS'** reasonable expenses, including, but not limited to, copying and labor costs associated with the audit. **Client** will provide **CONEXIS** with a summary of the findings from each report prepared in connection with any such audit and provide **CONEXIS** with a reasonable period of time following receipt of such report to provide written comments to the findings. Such reports will be considered confidential information that may not be further disclosed for any purpose except as required by applicable law. Under no circumstances is **Client** permitted to audit **CONEXIS'** records that relate to other **Clients**.

3.3 Audit by CONEXIS. Client will promptly furnish its financial statements as prepared by or for Client in the ordinary course of its business for the purpose of determining Client's ability to satisfy its financial obligations hereunder. To the extent such financial statements are not otherwise publicly available, such statements will be deemed to be Confidential Information and shall be used by CONEXIS solely for the purpose of determining Client's ability to perform its duties hereunder. If CONEXIS' review of financial statements causes CONEXIS to question Client's ability to perform its duties hereunder, CONEXIS may request, and Client shall provide to CONEXIS, reasonable assurances of Client's ability to perform its duties hereunder. Failure by Client to provide such reasonable assurances to CONEXIS shall be deemed a material breach of this Agreement. Furthermore, Client shall notify CONEXIS immediately in the event there is a change of control or material adverse change in Client's business or financial condition since the Effective Date.

3.4 Standard of Care: CONEXIS and its subcontractors shall exercise a standard of care that includes the following: (i) exercising the level of care in the performance of its duties hereunder generally exercised by reasonable and prudent service providers performing similar services and (ii) exercising commercially reasonable efforts, in accordance with this Agreement, to assist the Client with ensuring that the Benefit Plans comply with all applicable federal laws and regulations.

3.5 Nature of Duties: The services to be performed by CONEXIS under this Agreement shall be ministerial in nature and shall generally be performed in accordance with CONEXIS' standard operating procedures. It shall not be considered a breach of this Agreement if CONEXIS refuses to perform services generally required under this Agreement if the manner in which Client desires such services to be performed requires material changes to CONEXIS' operating procedures that were not contemplated at the time the Parties entered into the Agreement. CONEXIS, at its discretion, shall act in accordance with Client's written instructions subject to Section 2.5 herein. Client acknowledges that CONEXIS is not an accounting or law firm and no services provided by CONEXIS in accordance with this Agreement should be construed as legal, accounting, or tax advice in providing administrative services under this Agreement.

3.6 Customer Service and Electronic Administrative Services: Except during times of scheduled maintenance and company scheduled closures, CONEXIS shall provide telephonic or Web-based electronic access to:

- i) Client Services personnel for Client Representative(s) during CONEXIS' standard business hours (8:00 AM – 5:00 PM Central Time) Monday through Friday (telephonic support);
- ii) Participant Services personnel for Client's Qualified Beneficiaries ("Continuants") and Participants (7:00 AM to 7:00 PM Central Time) Monday through Friday (telephonic support);
- iii) Administrative Services support twenty-four (24) hours per day, seven (7) days per week for Client's Representatives, Participants and Continuants (Web-based electronic access).

3.7 Indemnify Client: CONEXIS agrees to indemnify and hold harmless Client, its officers, directors and employees from and against all losses, liabilities, damages, expenses including reasonable attorneys' fees ("Losses") arising out of CONEXIS' material breach of the standard of care set forth in this Agreement. Notwithstanding the foregoing, CONEXIS will not be liable to Client in a breach of contract claim for other than monetary, compensatory damages that are reasonably foreseeable and ascertainable, regardless of whether or not CONEXIS was informed of the possibility of such damages. CONEXIS further agrees to indemnify and hold harmless Client, its officers, directors and employees from any claim, demand, or expense arising from the negligent act or omission or willful misconduct of a subcontractor of CONEXIS who assists CONEXIS with the performance of its duties under this Agreement. The foregoing indemnification right is contingent upon Client satisfying Section 4.17 herein.

SECTION 4. GENERAL PROVISIONS

4.1 Entire Agreement: This Agreement embodies the entire understanding between CONEXIS and Client regarding the subject matter hereof and supersedes all prior and contemporaneous oral or written Agreements relating to the same subject matter. Client further agrees that this Agreement supersedes any prior service Agreement(s) between the Parties (or their predecessors) and acknowledges that it received appropriate written notice of termination of such prior written Agreement(s).

4.2 Severability: The provisions of this Agreement shall be severable and the invalidity or unenforceability of any provision(s) hereof shall not affect the validity or enforceability of the remaining provisions provided the basic purpose of this Agreement can still be achieved through the execution of the remaining valid provisions.

4.3 Titles/Heading/Numbering: The titles/headings/numbering of the sections herein are for convenience of reference only and are not to be considered in construing this Agreement.

4.4 Waiver; Modification; Amendment: No waiver, modification or amendment of this Agreement shall be valid or binding unless the same is in writing and duly Executed by both Parties, except as otherwise set forth herein.

4.5 Assignment: Notwithstanding any acquisition or merger of either party, neither Client nor CONEXIS may assign this Agreement without the other party's prior written consent. Any attempt or purported assignment in violation of the

foregoing shall be void. This Agreement shall be binding upon, and inure to the benefit of, the **Parties** and their respective successors and permitted assigns.

4.6 Confidential Information: In addition to the **HIPAA BUSINESS ASSOCIATE ADDENDUM**, **Client** and **CONEXIS** each acknowledge that in performance of this **Agreement**, each party has and will continue to disclose to the other, proprietary and confidential information ("**Confidential Information**"). The term "**Confidential Information**" shall mean this **Agreement** and all data, trade secrets, and other information of any kind whatsoever that a Party ("**Discloser**") discloses, in writing, orally, visually or in any other medium, to the other Party ("**Recipient**") or to which **Recipient** obtains access and that relates to **Discloser's** business or, in the case of **CONEXIS**, its customers or is otherwise identified by the **Discloser** as confidential or proprietary. A "**writing**" shall include an electronic transfer of information by e-mail, over the Internet or otherwise. Each of the **Parties**, as **Recipient**, hereby agrees that it will not, and will cause its employees, agents and subcontractors not to disclose **Confidential Information** of the other Party, during or after the term of this Agreement, other than on a "need to know" basis and then only to: (a) affiliate employers (defined as a business entity now or hereafter controlled by, controlling or under common control with a Party); (b) employees; (c) offices; (d) agents and/or (e) subcontractors provided that any third parties who receive **Discloser's** Confidential Information from **Recipient** or on behalf of **Recipient** are subject to a written confidentiality agreement that shall be no less restrictive than the provisions of this Section; and (f) as required by law or as otherwise expressly permitted by this **Agreement**. If **Recipient** is required by law to disclose **Discloser's** Confidential Information, **Recipient** will promptly notify **Discloser** and reasonably cooperate with **Discloser** if **Discloser** takes action to prevent any such disclosure. **Client** further agrees that **CONEXIS** may communicate confidential, protected, privileged or otherwise sensitive information to **Client** through a named contact designated by **Client** ("**Named Contact**") and specifically agrees to indemnify and hold harmless **CONEXIS** for any such communications directed to **Client** through the **Named Contact** attempted via facsimile, mail, telephone, email or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted once **CONEXIS** has sent such to **Client**. The obligations of confidentiality in this Section shall not apply to any information that (i) **Recipient** rightfully has in its possession when disclosed to it, free of obligation to **Discloser** to maintain its confidentiality; (ii) **Recipient** independently develops without access to **Discloser's** **Confidential Information**; (iii) is or becomes known to the public other than by breach of this Section or (iv) is rightfully received by **Recipient** from a third party without the obligation of confidentiality. Any combination of **Confidential Information** disclosed with information not so classified shall not be deemed to be within one of the foregoing exclusions merely because individual portions of such combination are free of any confidentiality obligation or are separately known in the public domain. Each Party hereby agrees that it will not disclose **Confidential Information** of the other Party during or after the Term of this **Agreement**, other than as necessary to satisfy its obligations herein or as otherwise permitted herein, and then only to, the Party's affiliates, the Party's employees, agents, officers or independent contractors, subcontractor provided that subcontractor agrees to terms of confidentiality; and as required by law or as otherwise expressly permitted by this **Agreement**.

4.7 Disclosure of Individually Identifiable Health Information: **Client** and **CONEXIS** agree to protect the confidentiality of and to only use and disclose protected health information (as that term is defined in 45 C.F.R. 164.300) as set forth in the **HIPAA BUSINESS ASSOCIATE ADDENDUM** attached hereto and incorporated into and made a part of this **Agreement**. If there is a conflict between this **Agreement** and the **HIPAA BUSINESS ASSOCIATE ADDENDUM**, the **HIPAA BUSINESS ASSOCIATE ADDENDUM** will control with respect to its subject matter.

4.8 Notices and Communications: All notices between **Client** and **CONEXIS** provided for herein shall be sent by confirmed facsimile; by guaranteed overnight mail, with tracing capability; by first class United States mail, with postage prepaid; or by email addressed to the other party at their respective addresses as set forth below for **CONEXIS** and on the signature page for the **Client**.

CONEXIS Benefits Administrators, LP
6191 North State Highway 161, Suite 400
Irving, TX 75038

Email: contractadministration@CONEXIS.com
FAX: 1.800.806.9112

Notices shall be deemed provided when sent except as otherwise set forth in this **Agreement**. Emails sent to **CONEXIS** should be sent to the appropriate **CONEXIS** Service Representative or Contract Administration. Both **Parties** agree to promptly notify the other of any changes in addresses and/or email addresses that neither party shall be responsible under this **Agreement** for notices sent prior to notification of a change in the address.

4.9 Termination: If there is more than one **Fee Schedule / Service Appendix** attached hereto, termination of one **Fee Schedule / Service Appendix** will not terminate the entire **Agreement**, but termination of the **Agreement** will terminate all **Fee Schedule / Service Appendix**.

a. **Agreement** -- Either party may terminate this **Agreement** or a **Fee Schedule/Service Appendix** without a showing of cause by providing sixty (60) days prior written notice to the other party. Termination

without cause will be effective on the last day of the month following the 60-day period the notice was provided by terminating party or the end of such longer period set forth in the notice of termination. Client acknowledges that termination of a **Fee Schedule / Service Appendix** prior to the expiration of a Service Fee Guarantee Period will result a financial penalty defined in Section 4.9b.

- b. **Fee Schedule / Service Appendix – Client** understands and acknowledges that **CONEXIS** is entitled to reimbursement of implementation costs and expenses (“**Implementation Expenses**”) not otherwise passed on to **Client** if this **Agreement** or the **Fee Schedule/Service Appendix** is terminated by **Client** without show of cause within the Service Fees Guarantee Period of any **Fee Schedule / Service Appendix**. In the event **CONEXIS** is entitled to reimbursement of Implementation Expenses herein, **Client** agrees to pay the implementation fee to **CONEXIS** within thirty (30) days of the termination effective date.

Notwithstanding anything to the contrary, **CONEXIS** may terminate this **Agreement** with prior written notice if **Client** is past due on any amounts that it owes hereunder. If **CONEXIS** agrees to reinstate services following notice of termination, **Client** acknowledges that **CONEXIS** may charge a reinstatement fee. Either party may terminate this **Agreement** immediately, by providing written notice to the other if: (i) such other party becomes insolvent, makes a general assignment for the benefit of creditors, suffers, or permits the appointment of a receiver for its business or assets or (ii) becomes subject to any proceedings under Bankruptcy or insolvency law of which does not result in a reorganization (ii) fails to cure a material breach within thirty (30) days following written notice from the non-breaching party of the breach. Termination of this **Agreement** will not terminate the rights or obligations of either party arising prior to the effective date of such termination. The indemnity, confidentiality and privacy provisions of this **Agreement** shall survive its termination

4.10 Interpretations: **Client** and **CONEXIS** agree that this **Agreement’s** terms will be construed fairly and not in favor of or against a party based solely on which party drafted the **Agreement’s** terms.

4.11 Governing Law: This **Agreement** will be governed by and construed in accordance with the laws of the state of Texas without regard for conflicts of law principles. Any proceeding initiated by **CONEXIS** to enforce this **Agreement** or enjoin its breach shall be initiated and prosecuted in a federal or state court of federal jurisdiction sitting in the county and state in which **Client’s** headquarters are located. Any such proceeding initiated by **Client** shall be initiated and prosecuted in a federal or state court of federal jurisdiction sitting in Dallas County, Texas.

4.12 No Third Party Beneficiaries: Nothing express or implied in this **Agreement** is intended to confer upon any person other than **Client** and **CONEXIS** and their respective successors or assigns, any rights, remedies or obligations whatsoever.

4.13 Force Majeure: **CONEXIS** and **Client** will not be deemed in default of this **Agreement**, nor held responsible for, any cessation, interruption or delay in the performance of its obligations to provide such services hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, terrorism, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business from **CONEXIS’** vendors or other **Parties**, including Intranet or Internet access, or any change in or the adoption of any law, judgment or decree. This clause shall not apply to **Client’s** obligations to pay **CONEXIS’** fees related to this **Agreement**.

4.14 Warranties and Representations: **CONEXIS** and **Client** represents and warrants the following: (i) The parties comply with applicable law in carrying out their respective obligations hereunder; (ii) Its agreement to each provision contained in this **Agreement** is a duly authorized, legal, valid, binding and enforceable **Agreement**. (iii) The signature appearing for the **Client** on this **Agreement** is the true signature of a person authorized to execute the **Agreement** on behalf of the **Client** with respect to the Services, (iv) The Client will not instruct **CONEXIS** to perform any service or perform a service in any manner that it knows or reasonably should know will violate applicable law.

4.15 Intellectual Properties: **CONEXIS** retains all rights, title, and interest in and to all software, web pages, web services, documents, processes and any other information, equipment, and materials (including with no limitation the intellectual property rights) used in connection with the providing of services identified in this **Agreement**, including those developed by **CONEXIS** for use by **Client** and their employees.

4.16 Survival: In the event of expiration or termination of this **Agreement**, the Indemnity Sections 2.5 and 3.7; Confidentiality and Privacy Provisions Section 4.6; and the Recordkeeping Section 3.1 of this **Agreement** shall survive its termination.

4.17 Indemnification Notice: If any civil, criminal, administrative or investigative action or proceeding (each, a “**Claim**”) is commenced against any Party entitled to indemnifications hereunder (an “**Indemnified Party**”), notice thereof shall be given to the party that is obligated to provide indemnification (the “**Indemnifying Party**”) as promptly as practicable but in any event within thirty (30) days. After such notice, if the **Indemnifying Party** shall acknowledge in writing to such **Indemnified Party** that this **Agreement** applies with respect to such **Claim**, then the **Indemnifying Party** shall be entitled, if it so elects, in a notice delivered to the **Indemnified Party** not less than 10 days prior to the date on which a response to such **Claim** is due, to take control of the defense and investigation of such **Claim** and to employ and engage

attorneys of its choice to handle and defend the same, at the **Indemnifying Party's** sole cost and expense. The **Indemnified Party** shall cooperate in all reasonable respects with the **Indemnifying Party** and its attorneys in the investigation, trial and defense of such **Claim** and any appeal arising there from; provided, however, that the **Indemnified Party** may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such **Claim** and any appeal arising there from. No settlement of a **Claim** that involves a remedy other than the payment of money by the **Indemnifying Party** shall be entered into without the consent of the **Indemnified Party**. After notice by the **Indemnifying Party** to the **Indemnified Party** of its election to assume full control of the defense of any such **Claim**, the **Indemnifying Party** shall not be liable to the **Indemnified Party** for any legal expenses incurred thereafter by such **Indemnified Party** in connection with the defense of that **Claim**. If the **Indemnifying Party** does not assume full control over the defense of a **Claim** subject to such defense as provided hereunder, the **Indemnifying Party** may participate in such defense, at its sole cost and expense, and the **Indemnified Party** shall have the right to defend the **Claim** in such manner as it may deem appropriate, at the cost and expense of the **Indemnifying Party**.

4.18 Limitation of Liability. IN NO EVENT OR UNDER ANY CIRCUMSTANCE SHALL ANY PARTY BE LIABLE TO ANOTHER PARTY FOR ANY LOSS OF PROFITS OR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT BE INTERPRETED TO LIMIT INDEMNIFICATION FOR ANY DAMAGES ASSESSED IN FAVOR OF A THIRD PARTY IN CONNECTION WITH A **CLAIM** AGAINST AN **INDEMNIFIED PARTY** TO THE EXTENT THE **INDEMNIFIED PARTY** IS OTHERWISE ENTITLED TO INDEMNIFICATION HEREUNDER.

Section 5.0 Performance Standards And Guarantee

Performance Standards and Guarantees are only available to those Clients who have a fully Executed Services Agreement on file with CONEXIS.

5.1 In consideration of the mutual promises set forth below and for the fees set forth in the Fee Schedule, **Client** and **CONEXIS** agree as follows:

- 5.1.1** “**Calendar Quarter**” will mean each quarter of a calendar year (e.g., Jan. 1 – Mar. 31; Apr 1 – Jun 30; Jul 1 – Sep. 30; Oct. 1 – Dec. 31).
- 5.1.2** “**Percentage at Risk for Service Fee Reduction**” will mean the percentage of the monthly fee that may be reduced as a result of failing to meet the particular Performance Standard in a **Calendar Quarter**.
- 5.1.3** “**Performance Standard**” will mean specific standards, described in the Exhibit, which is part of the attached Services Appendix for each described service to which **CONEXIS** has committed to meet or exceed for all similarly situated **Clients** in each **Calendar Quarter**.
- 5.1.4** “**Quarterly Performance Report**” will mean the specific report, delivered to **Client** for each Calendar Quarter, which contains **CONEXIS'** actual performance against each Performance Standard for Client. The Quarterly Performance Report will be formatted as **CONEXIS** deems appropriate.
- 5.1.5** “**Performance Standards Effective Date**” will be the first **Calendar Quarter** following the execution of the Services Agreement.
- 5.1.6** “**Service Fee Reduction**” will mean the total amount of reduction of monthly **Service Fees**, as defined in the **Agreement**, based on **CONEXIS** failing to meet one or more Performance Standards, in accordance with the Exhibit attached to the appropriate Service Appendix describing the three services offered with performance standards. The **Service Fee Reduction** is calculated by adding the percentages associated with each **Performance Standard** not met by **CONEXIS**. Then multiplying that percentage by the total of monthly **Service Fees** invoiced by **CONEXIS** to the **Client** for that particular **Calendar Quarter** for that particular service **CONEXIS** is performing for **Client**. In no case shall the percentage available for **Service Fee Reduction** exceed 10% as indicated in the Performance Standards Exhibit for any given **Calendar Quarter**.

5.2 CONEXIS' Responsibilities. **CONEXIS** will measure its performance against all of the **Performance Standards** in each Calendar Quarter. **CONEXIS** will adopt standard processes and procedures for measuring timeliness, resolution of inquiries, call abandonment, and accuracy and all other **Performance Standards** described in the Exhibit. **CONEXIS** retains final authority for determining whether one or more **Performance Standards** have been met but will consider any



reasonable objections made by **Client** within ten (10) business days of the issuance of the Quarterly Performance Report, in accordance with the Performance Standards Exhibit. In no event will **CONEXIS** be in breach of the **Agreement** into which this Exhibit is incorporated or of any standard of care solely by reason of failing to meet a **Performance Standard** set forth herein.

On or about forty-five (45) calendar days after the end of each **Calendar Quarter**, **CONEXIS** will distribute the **Quarterly Performance Report** to the **Client**.

CONEXIS will refund the **Service Fee Reduction** to **Client** for any missed **Performance Standard(s)** in accordance with this Performance Standards Exhibit, by applying such **Service Fee Reduction** as a one-time credit against future **Services Fees** in the following **Calendar Quarter**. For example, a **Service Fee Reduction** in the 1st **Calendar Quarter** of a given year would be applied to **Service Fees** in the 2nd **Calendar Quarter**.

If **CONEXIS** is not able to perform services under this **Agreement** due to a force majeure event as defined in Section 4.13 or other serious event beyond its reasonable control (such as but not limited to, severe weather conditions that delay the opening or cause the closing of a **CONEXIS** facility), then at **CONEXIS** sole discretion, the standards set forth in this Exhibit shall not apply during the period that **CONEXIS** is unable to perform.

5.3 Client Responsibilities. **Client** is responsible for reviewing the **Quarterly Performance Report** and addressing any definitions, concerns, or objections to the contents of the **Quarterly Performance Report** with the appropriate **CONEXIS** Client Services Manager within ten (10) business days of the issuance of the **Quarterly Performance Report**.

Client's right to any **Service Fee Reduction** is conditioned upon **Client** paying all **Service Fees** in that particular **Calendar Quarter** in full and when due, in accordance with the **Agreement**. In the event that a **Service Fee Reduction** was otherwise due but the **Agreement** was subsequently terminated due to failure of **Client** to pay all **Service Fees**, the **Service Fee Reduction** shall not be applied and **CONEXIS** shall be eligible to recover all **Service Fees** and applicable penalties and interest due without regard to the **Service Fee Reduction**.

Client's right to any **Service Fee Reduction** is also conditioned on remaining an active **Client** on the date that **CONEXIS** distributes the **Quarterly Performance Report** to **Client**.

5.4 Performance Standards. These Performance Standards apply to the Services Agreement, only to the extent that **CONEXIS** is providing such Services to the **Client**, and the **Client** is paying **CONEXIS** directly for this service as indicated in the Fee Schedule – Schedule of Service Fees. **CONEXIS** reserves the right to modify or eliminate one or more **Performance Standards** or **Service Fee Reductions**, upon 30 day written notice to **Client** prior to the next **Calendar Quarter**.

Client and **CONEXIS** have caused this **Agreement** to be **Executed** in their names by their undersigned officers, the same being duly authorized to do so.

Client/Company FAX: _____

Client/Contact Email: _____

Client/Company Name: _____

Client/Company Address: _____

CONEXIS Benefits Administrators, LP

Eva Boucher, CCEP
Sr. VP, Chief Compliance Officer

Client Authorized Signature

Printed Name and Title

Date: _____

Date: _____

HIPAA BUSINESS ASSOCIATE ADDENDUM Direct Client

Client Name (“Employer”): _____

Date (“Effective Date”): 1, 20

This **HIPAA BUSINESS ASSOCIATE ADDENDUM** (the “**Addendum**”) is entered into by and between **Employer** in its individual capacity and on behalf of its group health plan(s) (“**Plan**”) administered pursuant to this **Agreement** and **CONEXIS Benefit Administrators, L.P.**, (“**CONEXIS**”) in its capacity as both the **Plan’s** and **Employer’s** service provider as of the **Effective Date**. This **Addendum** is incorporated into and made a part of the Services Agreement between **CONEXIS** and **Employer** (“**Agreement**”). This Agreement is intended to comply with the privacy and administrative simplification requirements set forth in 45 CFR Parts 160, 162, and 164, issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”).

Both **Employer** and **CONEXIS** acknowledge that the **Plan** and **Employer** are separate and distinct entities and that **CONEXIS** may perform services both on behalf of the **Plan** and also on behalf of **Employer** in its capacity as **Plan** sponsor. **CONEXIS** is considered a “**Business Associate**” with respect to services it performs on behalf of the **Plan**, if any, and an “**Agent of Employer**” with respect to services it performs on behalf of **Employer**, if any. This **Addendum** sets forth the responsibilities of **CONEXIS** in its capacity as a **Business Associate**, as required by 45 CFR § 164.504(e)(1) and in its capacity as **Agent of Employer**, as required by 45 CFR § 164.504(f)(2)(ii)(B).

CONEXIS recognizes that in the course of performing some of the services, it will have access to, create, and/or receive from the **Plan** Protected Health Information (“**PHI**”). For purposes herein, **PHI** shall be limited to the information created or received from the **Plan** or on the **Plan’s** behalf by **CONEXIS**. Whenever used in this **Addendum**, other capitalized terms shall have the respective meaning set forth below, unless a different meaning shall be clearly required by the context. In addition, other capitalized terms used in this **Addendum**, but not defined herein, shall have the same meaning, as those terms are defined in **HIPAA**.

If there is a conflict between the Agreement and this **Addendum** with regard to the subject matter herein, this **Addendum** controls.

I. Definitions

For purposes of this Agreement:

“**Designated Record Set**” will have the same meaning given to the term “**designated record set**” in 45 CFR §164.501.

“**Electronic Data Interchange Rule**” shall mean the rules regarding standard transactions and code sets set forth in 45 C.F.R. Parts 160, 162 and 164, as may thereafter be amended.

“**Group Health Plan**” will have the same meaning as the term “**group health plan**” in 45 CFR § 160.103.

“**Individual**” will have the same meaning as the term “individual” in 45 CFR §160.103 and will include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

“**Privacy Breach**” will have the same meaning as “Breach” set forth in 45 CFR §164.402.

“**Privacy Rule**” will mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” will have the same meaning as the term “**protected health information**” in 45 CFR §160.103, limited to the information created or received by the **CONEXIS** from or on behalf of the **Plan**.

“**Required by Law**” will have the same meaning as the term “required by law” in 45 CFR § 164.103.

“**Secretary**” will mean the Secretary of the Department of Health and Human Services or his designee.

“**Security Incident**” will have the same meaning as the term “**security incident**” in 45 CFR § 164.304.

“**Security Rule**” will mean the Security Standards for the Protection of Electronic Protected Health Information in 45 CFR § 164.302 et seq.

“**Unsecured Protected Health Information**” or “**Unsecured PHI**” will have the same mean as the term “**Unsecured Protected Health Information**” in 45 C.F.R. 164.402.

II. Confidentiality

At all times, both during and after the termination of its relationship with the **Employer** for any reason, **CONEXIS** will not use or disclose **PHI** in any manner whatsoever, except as otherwise permitted by this **Addendum**.

III. Permitted Uses and Disclosures of Business Associate.

(a) Except as otherwise limited in this **Addendum**, **CONEXIS** may use or disclose **PHI**, provided that such use or disclosure of **PHI** would not violate the Privacy Rule, as follows: (a) as permitted or required in this **Addendum** and in the Agreement; (b) as otherwise permitted by the Privacy Rule; (c) as Required by Law; (d) for the proper management and administration of **CONEXIS**; (e) to fulfill any present or future legal responsibilities of **CONEXIS**; (f) for Data Aggregation services to the **Plan** (as defined in 45 CFR § 164.501); or (g) any use and disclosure of **PHI** that has been de-identified in accordance with 45 CFR § 164.514.

(b) **CONEXIS** agrees to document any disclosures of **PHI** and the information related to such disclosures to respond to an accounting of disclosures of **PHI** if requested by the **Plan** in accordance with 45 CFR §164.528, and to provide such documentation to the **Plan** as it may request from time to time.

(c) In the event that **CONEXIS** maintains **PHI** in a Designated Record Set, **CONEXIS** agrees to provide access to such **PHI** that it maintains in a Designated Record Set to the Individual to whom the **PHI** relates in accordance with 45 CFR § 164.524. Furthermore, at the reasonable request of the **Plan**, **CONEXIS** agrees to make amendments to **PHI** that it maintains in a Designated Record Set as directed by the **Plan** and to reasonably incorporate any amendments to **PHI** in accordance with 45 CFR § 164.526.

(d) **CONEXIS** may disclose **PHI** to its agents or subcontractors with a bona fide need to know such **PHI**, but only if, prior to such disclosure, such agents or subcontractors provide reasonable assurances that they will agree to substantially the same restrictions and conditions that apply to **CONEXIS** with respect to such **PHI**, including electronic **PHI**.

(e) **CONEXIS** may disclose the **PHI** revealed to it by the **Plan** if and to the extent that such disclosure is required by law or court order or as otherwise permitted by law. Further, **CONEXIS** agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of **PHI** received from, or created or received by **CONEXIS** on behalf of the **Plan** available to the Secretary, as requested by the **Plan** or designated by the Secretary, for purposes of the Secretary determining the **Plan**'s compliance with the Privacy Rule.

(f) In accordance with 45 CFR §164.520, and to the extent that such a limitation may affect the **Business Associate's** use or disclosure of **PHI**, **Employer**, acting on behalf of the **Plan**, agrees to notify **CONEXIS** of any limitation(s) in the notice of privacy practices required by the Privacy Rules, including, without limitation, any changes in or revocation of permission by an Individual to use or disclose **PHI**. **Employer**, acting on behalf of the **Plan**, also agrees to notify **CONEXIS** of any restriction to the use or disclosure of **PHI** that **Employer** has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect **CONEXIS'** use or disclosure of **PHI**. **Employer** acknowledges and agrees that **CONEXIS** is not bound by any such restrictions that impact **CONEXIS'** use or disclosure of **PHI** to the extent such restrictions are not otherwise required by the HIPAA Privacy Rules and **CONEXIS** has not consented to such restrictions in advance. **CONEXIS** agrees not to unreasonably withhold consent.

(g) **CONEXIS** agrees to take steps to implement safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic **PHI** maintained by **CONEXIS** on behalf of the **Plan**. **CONEXIS** will report to the **Plan's** designated representative any use or disclosure of **PHI** otherwise than as provided by this **Agreement**, including any Security Incident, as soon as reasonably possible of becoming aware of such use or disclosure. As of the Compliance Date of 42 U.S.C. § 17931 and the regulations issued thereunder, **CONEXIS** agrees to comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316. In addition, **CONEXIS** hereby agrees that it shall report to the **Plan's** designated representative, without unreasonable delay, but not longer than 60 days following its discovery of any incident that, in **CONEXIS'** reasonable determination, constitutes a

Privacy Breach of Unsecured **PHI**. **CONEXIS** shall provide such notice to the **Plan's** designated representative in accordance with 45 CFR 164.410 of the Breach Notification Rules, subject to the law enforcement delay set forth in 45 CFR 164.412. In addition, **CONEXIS** may, in its sole discretion, provide any of the following notices of any incident that constitutes a Privacy Breach for which **CONEXIS** is required to provide notice to the **Plan's** designated representative as set forth herein: (i) notice to affected individuals, including any substitute notice as necessary in accordance with 45 CFR 164.404 (ii) if required (and to the extent permitted under applicable law), immediate notice to the Secretary of the Department of Health and Human Services ("HHS"), including maintaining a log or other documentation of Privacy Breaches to be provided to the Secretary on an annual basis in accordance with 45 CFR 164.408 and (iii) if required, notice to a media outlet in accordance with 45 CFR 164.406.

(h) Notice to **Plan** and **Employer**.

- (i) Immediately following execution of this **Addendum**, **Employer** will provide **CONEXIS** with written notice identifying the **Plan's** and the **Employer's** designated representative for purposes of receiving notices required by **CONEXIS** under this **Addendum**.
- (ii) **Employer** agrees to provide prompt written notice to **CONEXIS** of any changes to the names or positions of employees identified by **Employer** as a designated representative of the **Employer** and/or the **Plan**. **CONEXIS** shall have no duty to inquire whether the list of Designated Persons is accurate.
- (iii) **Employer** shall indemnify and hold **CONEXIS**, its employees, agents and Affiliates harmless for any and all liability **CONEXIS** may incur as a result of any improper use or disclosure of **PHI** by **Employer** or a designated representative.

(i) To the extent applicable, **CONEXIS**, the **Employer** and the **Plan** agree to comply with the provisions of the Electronic Data Interchange Rule with respect to **PHI** disclosed by the parties.

IV. CONEXIS acting as Agent of the Employer

The following services are performed by **CONEXIS** as an agent of the **Employer** and not on behalf of the **Plan**:

- Services that facilitate and report the enrollment and disenrollment of employees and their eligible dependents in the **Plan**.
- Services that facilitate the payment of premiums under the Group Health **Plan**.

The Parties acknowledge that information created or received by **CONEXIS** in its capacity as agent of the employer is not **PHI** and is not subject to the HIPAA Privacy Rule, Electronic Data Interchange Rule, and Security Rule. Any such information received by **CONEXIS** as agent of the employer shall be deemed confidential information subject to the terms and conditions of confidentiality set forth in the Agreement.

V. Term/Termination

- (a) Term. This Addendum shall continue until the Agreement is terminated or as set forth herein.
- (b) Termination for Cause. Upon a Party's knowledge of a material breach of this Addendum by the other Party, the non-breaching Party shall either:
 - (i) Provide an opportunity for the breaching Party to cure the breach within 30 days or, if longer, such other reasonable period time, or end the violation and terminate this **Addendum** and, where necessary, the Agreement between the parties with respect to the services if the breaching Party does not cure the breach as set forth herein; or
 - (ii) Immediately terminate this **Addendum** and, where necessary, the Agreement if the breaching Party has breached a material term of this Agreement and cure is not possible; or
 - (ii) If neither termination nor cure is feasible, the non-breaching Party shall report the violation to the Secretary.

(c) Effect of Termination. Upon termination of this Addendum, for any reason, **CONEXIS** shall return or destroy all **PHI** received from **Employer** and/or the **Plan**, or created or received by **CONEXIS** on behalf of the **Plan**, except to the extent determined infeasible as set forth herein. This provision shall also apply to **PHI** that is in the possession of subcontractors or agents of **CONEXIS**. In the event that **CONEXIS** reasonably determines that returning or destroying the **PHI** is infeasible, **CONEXIS** shall provide of the conditions that make return or destruction infeasible. In the event that **CONEXIS** determines that return or destruction of the **PHI** is infeasible, **CONEXIS** will continue to extend the protections of this Agreement to such **PHI** and limit further uses and disclosures of such **PHI** to those purposes that make the return or destruction infeasible.