

THE ENCORE FIDUCIARY LIABILITY INSURANCE POLICY

SOLIDARITY PROTECTION GROUP

a voluntary membership organization operating pursuant to the
Liability Risk Retention Act of 1986 and whose principal office is:
4323 Warren Street, NW, Washington, DC 20016-2437



ENCORE
FIDUCIARYSM

Division of Specialty Program Group, LLC

NOTICE:

THIS IS A CLAIMS-MADE AND REPORTED POLICY THAT APPLIES ONLY TO THOSE **CLAIMS** FIRST MADE AGAINST THE **INSURED** DURING THE **POLICY PERIOD** THAT ARE REPORTED TO THE INSURER DURING THE **POLICY PERIOD**. **CLAIM EXPENSES** ARE INCLUDED IN THE LIMITS OF LIABILITY. THE LIMIT OF LIABILITY AVAILABLE TO PAY **LOSS** SHALL BE REDUCED OR TOTALLY EXHAUSTED BY PAYMENT OF **CLAIM EXPENSES**.

PLEASE READ YOUR POLICY CAREFULLY



The Encore Fiduciary Liability Insurance Policy Certificate

Policy Number:
Renewal of:

Issuing Carrier:

Hudson Insurance Company
(hereinafter the "Insurer")

**ITEM 1. Insurance Representative:
Address:**

**ITEM 2. Plan (or Plans):
Address:**


ITEM 3. Policy Period:
Effective Date: (12:01 a.m. local time)
Expiration Date: (12:01 a.m. local time)

ITEM 4. Limits of Liability:

(a) Aggregate Limit of Liability: the maximum aggregate limit of liability for all Loss under this policy, including Claim Expenses	\$
(b) Trustee Claim Expenses (Non-Fiduciary Defense) Sublimit: the aggregate limit of liability for all Claim Expenses in connection with Claims solely alleging Wrongful Acts as defined in Section II. Definitions R.(3.) of the policy (included within and not in addition to the maximum aggregate limit of liability)	\$
(c) Voluntary Compliance Program Expenditures Sublimit: the aggregate limit of liability for all Voluntary Compliance Program Expenditures (included within and not in addition to the maximum aggregate limit of liability)	\$
(d) ERISA 502(c) Civil Penalties Sublimit: the aggregate limit of liability for all Loss in the form of civil fines or any excise tax imposed pursuant to Section 502(c) of ERISA or the Pension Protection Act of 2006 (included within and not in addition to the maximum aggregate limit of liability)	\$
(e) HIPAA and HITECH Fines and Penalties Sublimit: the aggregate limit of liability for all Loss in the form of civil fines and penalties imposed pursuant to HIPAA and HITECH (included within and not in addition to the maximum aggregate limit of liability)	\$

This Policy Certificate, together with the Policy Form ESF-31210001 (09/2012), the endorsements indicated in ITEM 9 above, if any, and the completed and signed application(s) with any submitted attachments, complete the above-numbered policy.

Date: _____


Authorized Representative

SPECIMEN

In consideration of the payment of the premium and subject to the limits of liability and the Policy Certificate, conditions, limitations, provisions and other terms of this policy, the Insurer and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

- A. The Insurer will pay on behalf of the **Insureds** those **Damages** and **Claim Expenses** which the **Insureds** become legally obligated to pay as a result of any **Claim** first made against them during the policy period or, if applicable, the extended reporting period.
- B. The Insurer will pay on behalf of the **Insureds** those **Voluntary Compliance Program Expenditures** incurred by the **Insureds** as a result of their participation in any **Voluntary Compliance Program** if such participation commences during the policy period or, if applicable, the extended reporting period.
- C. The Insurer will pay on behalf of the **Insureds** those **Content Restoration Expenditures** and **Crisis Notification Expenditures** directly resulting from a covered **Information Breach** in the **Plan's** business operations.

II. DEFINITIONS

The following terms in bold-face type, when used in this policy, shall have the meanings set forth below:

- A. **Administration** means, with respect to a **Plan**: giving advice and/or counseling to participants and beneficiaries; providing interpretations; handling records; determining and calculating **Benefits**, including the alleged failure to make timely determinations of eligibility for **Benefits**; preparing, distributing or filing required notices or documents, including but not limited to the actual or alleged failure to properly and timely provide COBRA notices or other required notices; or activities relating to enrollment, termination or cancellation of participants or beneficiaries under a **Plan**.
- B. **Benefits** means any obligation under a **Plan** to a **Plan** participant or beneficiary that is a payment of money or property.
- C. **Claim** means:
 - 1. a written demand for monetary damages, non-monetary damages or injunctive relief;
 - 2. a civil proceeding commenced by the service of a complaint or similar pleading;
 - 3. a criminal proceeding commenced by the return of an indictment;
 - 4. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or
 - 5. a written notice by the U.S. Department of Labor or the U.S. Pension Benefit Guaranty Corporation of the commencement of an investigation;

seeking to hold an **Insured** liable or responsible for a **Wrongful Act** committed or attempted, or allegedly committed or attempted, by such **Insured** or by any person for whose **Wrongful Acts** such **Insured** is or is alleged to be legally responsible.

- D. **Claim Expenses** means reasonable expenses and legal fees (other than regular and overtime wages, salaries or fees of the directors, officers, trustees or employees of the **Insured**) incurred by or on behalf of the **Insureds** in the investigation, adjustment, defense or appeal of a **Claim**, including the premium for an appeal bond.
- E. **Content Restoration Expenditures** means reasonable and necessary costs that are extraordinary and beyond the **Plan's** normal expenditures and that are incurred by the **Plan**, subject to the Insurer's prior consent, to restore or recreate content when such content was:
1. maintained in the **Insured's** care or the care of a trusted party; and
 2. damaged or destroyed as a result of an **Information Breach**.

If the content cannot be restored or recreated, the **Content Restoration Expenditures** will be the actual expenses incurred to reach that determination. The **Insured** must secure written consent from the Insurer before incurring any **Content Restoration Expenditures**.

Content Restoration Expenditures does not include:

1. the cost to restore or recreate content to a level greater than that which existed immediately before the **Information Breach**; or
 2. costs incurred by the **Insured** more than twelve (12) months after the **Insured's** first discovery of an **Information Breach**.
- F. **Covered Penalties** means, solely in connection with a **Plan**, and subject to the aggregate limit of the policy and the aggregate sublimit of liability set forth in the Policy Certificate:
1. civil penalties or any excise tax imposed pursuant to Section 502(c) of ERISA, or pursuant to any other provision of ERISA that was amended by the multiemployer plan provisions of the PPA;
 2. civil penalties of up to five percent (5%) imposed pursuant to Section 502(i) of ERISA;
 3. civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty;
 4. civil fines and penalties imposed pursuant to HIPAA and HITECH;
 5. civil fines and penalties imposed pursuant to PPACA;
 6. the fifteen percent (15%) or less excise tax penalty imposed pursuant to Section 4975 of the Internal Revenue Code, with respect to covered judgments; and
 7. relief arising under Section 502(a)(3) of ERISA.
- G. **Crisis Notification Expenditures** means reasonable and necessary costs that are extraordinary and beyond the **Plan's** normal expenditures and are paid by, subject to the Insurer's prior written consent, the **Insured** within twelve (12) months of the **Insured's** first discovery of the **Information Breach** for any of the following:
1. the cost of any **Insured** to notify persons of a breach of the privacy of their personally identifiable information that was in the **Insured's** care, custody or control or in the care, custody or control of a trusted party;
 2. an **Insured's** public relations activities that are solely intended to mitigate a material impact to any **Insured** arising out of an **Information Breach** which has become substantially publicized through the news media;
 3. costs, including forensic and investigative expenses, billed to an **Insured** by others an **Insured** engages to determine the origin, extent and duration of an **Information Breach**; and

4. costs an **Insured** incurs for the credit monitoring services to affected persons because of an **Information Breach**.

Except for costs of efforts incurred within the first twenty-four (24) hours of the **Insured's** first discovery of an **Information Breach**, all **Crisis Notification Expenditures**, including, but not limited to, the costs to re-secure the personally identifiable information of affected persons and corporate confidential information, require the Insurer's prior written approval.

- H. **Damages** means monetary and non-monetary damages, judgments (including pre- and post-judgment interest on a covered judgment), settlements and **Covered Penalties** which an **Insured** is legally obligated to pay as a result of a **Claim**. **Damages** shall also include reasonable and necessary fees and expenses of an Independent Fiduciary if such fiduciary is retained as a necessary measure under fiduciary standards to review a proposed settlement of a covered **Claim**.

Damages will not include:

1. civil or criminal fines or penalties other than **Covered Penalties**;
2. taxes or tax penalties other than **Covered Penalties**;
3. cleanup costs relating to hazardous materials, pollution or product defects;
4. wages, tips and commissions;
5. **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Insured Person**; provided, however, that **Damages** shall include a monetary award in, or fund for settling, a **Claim** against any **Insured** to the extent it alleges a loss to a **Plan** or loss in the actual accounts of participants in a **Plan** by reason of an alleged breach of fiduciary duty resulting in a change in value of the investments held by that **Plan**; and provided further, however, that **Damages** shall include any negligent act, error or omission committed by the **Insured** solely in the miscalculation of any **Benefit** which results in an overpayment that would otherwise not be covered by the **Plan** and cannot be recovered by the **Plan** after reasonable effort; and
6. matters that may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Where permitted by law, **Damages** shall include punitive, exemplary and multiplied damages imposed upon any **Insured**, subject to this policy's other terms, conditions, and limitations, including, but not limited to, Section V.A(1) of this policy. Enforceability of this paragraph shall be governed by the applicable law that most favors coverage for such penalties and punitive, exemplary and multiplied damages.

Claim Expenses shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs 1 – 6 above, subject to the other terms, conditions, and exclusions of this policy.

- I. **Employee Benefit Law** means:

1. the Employee Retirement Income Security Act of 1974, as amended (ERISA), or any state statute or provision concerning fiduciary standards of care with respect to a **Plan**, including but not limited to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, the Women's Health and Cancer Rights Act of 1998, the Pension Protection Act of 2006 (PPA), and the Patient Protection and Affordable Care Act (PPACA);
2. the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH); and solely with respect to subparagraph (2) of the definition of **Wrongful Act**, unemployment insurance, Social Security, government-mandated disability benefits or similar law; and
3. Section 301 of the Labor Management Relations Act (LMRA) relating to alleged violations of collectively bargained contracts in connection with a **Plan**.

In no event shall **Employee Benefit Law**, other than as set forth in subparagraph (2) above, include any law other than ERISA which concerns workers' compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

- J. **Information Breach** means the following when allegedly or actually done by the **Insured** or on behalf of the **Insured**:
1. failure to prevent exposure of, unauthorized access use of, repudiation of access to, tampering with or introduction of malicious code into data, software, firmware, systems or networks;
 2. failure to prevent identity theft or credit/debit card fraud;
 3. failure to prevent the theft, unauthorized or illegal exposure of a person's personally identifiable information or commercial confidential information that resides in or on an **Insured's** laptop(s), device(s) or other media containing content or in on a trusted party's laptop(s), device(s) or other media containing content; and
 4. failure to prevent unauthorized access to or unauthorized use of commercial confidential information.
- K. **Insurance Representative** means the person or organization authorized to represent the **Insureds** and designated as such in ITEM 1 of the Policy Certificate of this policy.
- L. **Insured** means:
1. any **Plan**;
 2. any natural person serving as a past, present or future trustee, committee member or employee of a **Plan** in his or her **Administration** of a **Plan** or in his or her capacity as a fiduciary or trustee of a **Plan**; and
 3. any other entity or natural person designated as an additional **Insured** by written endorsement to this policy.
- M. **Loss** means **Damages, Claim Expenses, Voluntary Compliance Program Expenditures** and **Information Breaches**; provided, however, that **Loss** will not include:
1. any overhead expenses or charges, salaries, wages, fees or benefits of any **Insured**;
 2. any surcharges, taxes, fines or penalties other than those defined as **Covered Penalties** in Section II.F;
or
 3. any matter uninsurable under the law pursuant to which this policy is construed.
- N. **Plan** means each plan or trust enumerated in ITEM 2 of the Policy Certificate of this policy.
- O. **Related Claims** means all **Claims** based upon, arising from or in consequence of causally connected **Wrongful Acts**.
- P. **Voluntary Compliance Program** means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including but not limited to the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-In Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction Program.
- Q. **Voluntary Compliance Program Expenditures** means:

1. reasonable costs, charges and expenses of attorneys, accountants and/or other professionals that are incurred solely in investigating and evaluating a **Plan's** actual or alleged noncompliance with any statute, rule or regulation and effecting a resolution thereof pursuant to a **Voluntary Compliance Program**; and
2. any fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Voluntary Compliance Program** as a result of a **Plan's** actual or alleged inadvertent noncompliance with any statute, rule or regulation and, subject to the Insurer's approval, costs to correct a **Plan's** actual or alleged inadvertent noncompliance with any statute, rule or regulation that are incurred by the **Plan** in connection with its participation in a **Voluntary Compliance Program**.

R. **Wrongful Act** means:

1. any breach of the responsibilities, obligations or duties imposed upon fiduciaries of a **Plan** by an **Employee Benefit Law**;
2. any negligent act, error or omission by any **Insured** in the **Administration** of any **Plan**; or
3. with respect to **Claim Expenses** only, any negligent act, error or omission, other than a wrongful employment practice, by an **Insured** solely in such **Insured's** capacity as a trustee of a **Plan** that is not otherwise covered in subparagraphs (1) and (2) above.

III. DEFENSE AND SETTLEMENT

- A. The Insurer will have the right and duty to defend any **Claim** covered by this policy, even if the allegations in such **Claim** are groundless, false or fraudulent. Upon the exhaustion of the limit of liability applicable to any **Claim**, the Insurer's duty to defend such **Claim** will cease and, upon the exhaustion of the Insurer's maximum aggregate limit of liability under this policy as set forth in ITEM 4(a) of the Policy Certificate, the Insurer will thereafter have no duty or obligation to defend or to continue to defend any **Claim**.
- B. Subject to Section III.A above, the **Insureds** will have the right to select defense counsel to defend **Claims** against them, subject to the Insurer's approval, such approval not to be unreasonably withheld, and subject to such counsel's agreement to comply with applicable litigation management guidelines. The **Insureds** must, however, exercise this right in writing within thirty (30) days after first giving the Insurer notice of the **Claim** with respect to which such counsel is to be retained. If the **Insureds** do not inform the Insurer in writing of their intent to retain their own defense counsel within thirty (30) days after providing notice of a **Claim**, the Insurer will have the right to appoint defense counsel to represent the **Insureds** in connection with such **Claim** and to conduct the defense thereof.
- C. **Claim Expenses** incurred by counsel retained by the **Insureds**, or by the Insurer if the **Insureds** do not exercise their right to retain their own defense counsel, are part of and not in addition to the applicable limit of liability as set forth in ITEM 4(a) of the Policy Certificate, and the payment by the Insurer of such **Claim Expenses** will reduce, and may exhaust, the applicable limit of liability under this policy.
- D. The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and the **Insureds** further agree that, in the event of a **Claim**, they will do nothing that may prejudice the Insurer's position or actual or potential rights of recovery. At the Insurer's request, the **Insureds** will assist in the conduct of actions, suits or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence and obtaining the attendance of witnesses, and will also assist in making settlements.
- E. The **Insureds** agree not to settle any **Claim**, incur any **Claim Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent, which consent will not be unreasonably withheld. The Insurer will not be liable for any settlement, **Claim Expenses**, assumed obligation or admission to which it has not consented.

- F. The Insurer may make any investigation it deems necessary and may, with the written consent of the **Insureds**, make any settlement of a **Claim** it deems expedient.

IV. EXTENSIONS OF COVERAGE

A. Spouses, Estates and Legal Representatives

Subject to the limits of liability, retention, conditions, limitations, provisions and other terms of this policy, the coverage provided by this policy will extend to **Claims** made against:

1. the estate, heirs, legal representatives or assigns of any natural person **Insured** if such natural person **Insured** is deceased, or the legal representatives or assigns of any natural person **Insured** if such natural person **Insured** is incompetent, insolvent or bankrupt; and
2. the lawful spouse or domestic partner of a natural person **Insured** solely by reason of such spouse or domestic partner's status as such or such spouse or domestic partner's ownership interest in property which the claimant seeks as recovery for liability of such natural person **Insured**.

All conditions, limitations, provisions and other terms of this policy applicable to **Claims** against and **Loss** incurred by natural person **Insureds** will also be applicable to **Claims** against and **Loss** incurred by their estates, heirs, legal representatives, assigns, spouses and domestic partners. No coverage will be available under this Section IV.A, however, for any **Loss**, including costs, charges or expenses of defense, arising from any act, error or omission committed or attempted, or allegedly committed or attempted, by a natural person **Insured's** estate, heir, legal representative, assign, spouse or domestic partner.

B. Extended Reporting Period

1. If this policy is terminated or not renewed for any reason other than the non-payment of premium, the **Insureds** will have the right to purchase an extension of the coverage granted by this policy for a twelve (12) month period (the "extended reporting period") after the effective date of such termination or non-renewal. The extended reporting period, if purchased, will apply only to:
 - a. **Claims** first made during the extended reporting period, and only if such **Claims** are for otherwise covered **Wrongful Acts** committed, attempted or allegedly committed or attempted before the effective date of such termination or non-renewal;
 - b. **Voluntary Compliance Program Expenditures** incurred by **Insureds** as a result of the **Insureds'** participation during the extended reporting period in a **Voluntary Compliance Program**, but only if such participation commences during the extended reporting period and involves a **Plan's** actual or alleged inadvertent noncompliance with any statute, rule or regulation before the effective date of such termination or non-renewal.
2. The additional premium for the extended reporting period will be that amount set forth in ITEM 8 of the Policy Certificate. This additional premium must be paid within thirty (30) days after the effective date of the termination or non-renewal of the policy, and will be deemed to have been fully earned immediately as of the inception of the extended reporting period.
3. The Insurer's limits of liability for **Loss** from **Claims** first made or deemed made during the extended reporting period and for **Voluntary Compliance Program Expenditures** resulting from the **Insureds** participation during the extended reporting period in a **Voluntary Compliance Program** will be part of, and not in addition to, the limits of liability stated in ITEM 4(c) of the Policy Certificate, which are applicable to all **Loss** for which this policy provides coverage.

4. The Insurer reserves the right to approve a request for a longer extended reporting period not to exceed seventy-two (72) months, for such additional premium as the Insurer may require.

V. EXCLUSIONS

A. The Insurer shall not be liable for **Loss** on account of any **Claim** made against an **Insured**:

1. arising out of, based upon or attributable to any:
 - a. profit or advantage to which the **Insured** was not legally entitled; or
 - b. deliberate criminal or deliberate fraudulent act, or any knowing or willful violation of any statute, rule or law, including, but not limited to **Employee Benefit Law**, by an **Insured**;if established by any final, non-appealable adjudication in any action or proceeding other than an action or proceeding initiated by the Insurer to determine coverage under the policy;
2. for any actual or alleged libel or slander;
3. for any actual or alleged bodily injury to, or mental or emotional distress, sickness, disease or death of, any person, or damage to or destruction, loss or loss of use of any tangible property; provided, however, this exclusion shall not apply to **Claim Expenses** incurred in the defense of a **Claim** for a violation of an **Employee Benefit Law** by an **Insured**;
4. based upon, arising from or in consequence of any liability of others assumed by any **Insured** under any contract or agreement, whether oral or written, other than an agreement or declaration of trust or similar agreement creating or establishing a **Plan**; provided, that this exclusion will not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
5. based upon, arising from or in consequence of:
 - a. any act, error, omission, fact, circumstance, situation, transaction, event, decision or **Wrongful Act** if written notice thereof has been given under any policy of which this policy is a renewal or replacement if such prior policy affords coverage or, but for the exhaustion of its limit or limits or liability, would have afforded coverage for such **Loss**, in whole or in part, as a result of such notice; or
 - b. any demand, suit or other proceeding, or order, decree or judgment rendered, against any **Insured** on or prior to the Pending or Prior Proceeding Date set forth in ITEM 6 of the Policy Certificate of this policy, or the same or substantially similar facts, circumstances or situations underlying or alleged in any such demand, suit, proceeding, order, judgment or decree;
6. alleging, or resulting in, an **Information Breach** arising out of or in any way related to any actual or alleged:
 - a. refunds, credits, redemptions, discounts, coupons, offsets, rebates or returns, including, but not limited to licensing fees, subscription charges, access fees, royalties or any other type of fee or charge;
 - b. the cost to create a proof of **Loss** or to document a **Loss**; or
 - c. expenses the **Plan** incurs to upgrade, enhance or improve content, data, software, firmware, systems or networks to a state better than that which existed prior to the **Information Breach**.

B. Full Severability of Exclusions

No facts pertaining to or knowledge possessed by any **Insured** will be imputed to any other **Insured** to determine the application of any of the exclusion in Section V.A above

VI. CONDITIONS

A. Limits of Liability and Retention

1. Regardless of the number of **Claims**, the number of persons or entities included within the definition of **Insured**, the number of **Insureds** included in a particular **Claim** or the number of claimants who may make **Claims** against the **Insureds**, the amount stated in ITEM 4(a) of the Policy Certificate will be the Insurer's maximum aggregate limit of liability under this policy for all **Loss** for which this policy provides coverage, and the retention stated in ITEM 5 of the Policy Certificate will apply separately to each **Claim**.
2. **Claim Expenses** are part of and not in addition to the limit of liability set forth in ITEM 4(a) of the Policy Certificate, and payment of **Claim Expenses** by the Insurer will reduce, and may exhaust, that limit of liability.
3. The Insurer will have no obligation to pay **Loss**, including **Claim Expenses**, or to defend or continue to defend any **Claim**, after the limit of liability set forth in ITEM 4(a) of the Policy Certificate has been exhausted.
4. The amount set forth in ITEM 4(b) of the Policy Certificate will be the Insurer's maximum limit of liability under this policy for **Claim Expenses** only in connection with **Claims** solely alleging **Wrongful Acts** as defined in Section II.R(3) of this policy, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
5. The amount set forth in ITEM 4(c) of the Policy Certificate will be the Insurer's maximum limit of liability under Section I. Insuring Agreement B. for all **Voluntary Compliance Program Expenditures** incurred in connection with the **Insureds'** participation in **Voluntary Compliance Programs**, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
6. The amount set forth in ITEM 4(d) of the Policy Certificate will be the Insurer's maximum limit of liability under this policy for **Loss** in the form of civil penalties or excise tax imposed pursuant to Section 502(c) of ERISA and the PPA, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
7. The amount set forth in ITEM 4(e) of the Policy Certificate will be the Insurer's maximum limit of liability under this policy for **Loss** in the form of civil fines and penalties imposed pursuant to HIPAA and to HITECH, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
8. The amount set forth in ITEM 4(f) of the Policy Certificate will be the Insurer's maximum limit of liability under this policy for civil fines and penalties imposed pursuant to PPACA, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
9. The amount set forth in ITEM 4(g) of the Policy Certificate will be the Insurer's maximum limit of liability under this policy for excise taxes imposed pursuant to Section 4975 of the Internal Revenue

Code, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.

10. The amount set forth in ITEM 4(h) of the Policy Certificate will be the Insurer's maximum limit of liability under the policy for relief imposed pursuant to Section 502(a)(3) of ERISA, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
11. The amount set forth in ITEM 4(i) of the Policy Certificate will be the Insurer's maximum limit of liability under the policy for a miscalculation of benefits resulting in the overpayment of a benefit that would otherwise not be covered by the **Plan**, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
12. The amount set forth in ITEM 4(j) of the Policy Certificate will be the Insurer's maximum limit of liability under Section I. Insuring Agreement C. for all **Loss** resulting from an **Information Breach**, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
13. The obligations of the Insurer to pay **Loss**, including **Claim Expenses**, will only be in excess of any applicable retention as stated in ITEM 5 of the Policy Certificate, which amount will be borne by the **Insureds** at their own expense. The Insurer will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any applicable retention amount on behalf of any **Insured**, although the Insurer will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the Insurer any amounts so paid.

B. Notice

1. As a condition precedent to exercising their rights under Section I. Insuring Agreement A. of this policy, the **Insureds** must give the Insurer written notice as soon as practicable of any **Claim** made against them.
2. As a condition precedent to exercising their rights under Section I. Insuring Agreement B. of this policy, the **Insureds** must give the Insurer written notice as soon as practicable of their participation or intent to participate in a **Voluntary Compliance Program**; provided, that the Insurer will not be liable under Section I. Insuring Agreement B. for any **Voluntary Compliance Program Expenditures** incurred in connection with any **Voluntary Compliance Program** before such written notice has been given to the Insurer.
3. As a condition precedent to exercising their rights under Section I. Insuring Agreement C. of this policy, the **Insureds** must give the Insurer written notice as soon as practicable of an **Information Breach** discovered by the **Insured** or a trusted party. When an **Information Breach** is discovered that may reasonably be expected to result in a covered **Loss**, the **Insured** must:
 - a. immediately, upon the first discovery of the **Information Breach**, notify the Insurer in writing or by email. This notification must include a description of the **Information Breach**, a description of how, when and where the **Information Breach** or circumstances happened and copies of all available information relating to the **Information Breach** and its duration;
 - b. promptly authorize the Insurer to obtain records and other information and provide the Insurer with records and information as requested by the Insurer;
 - c. promptly cooperate with and assist the Insurer in the investigation of the **Information Breach** and any **Loss**; and
 - d. promptly assist the Insurer, upon request, in enforcing all rights of contribution or indemnity that any **Insured** or the person affected may have against all persons or entities.

4. If during the policy period or, if exercised, the extended reporting period, an **Insured** becomes aware of circumstances that could give rise to a **Claim** or an **Information Breach** and gives the Insurer written notice of such circumstances, then any **Claims** or **Information Breaches** subsequently arising from such circumstances will be considered to have been made during the policy period or, if exercised, the extended reporting period in which such circumstances were first reported to the Insurer.
5. As a condition precedent to exercising their rights under this policy, the **Insureds** must give the Insurer such information and cooperation as the Insurer may reasonably require, including but not limited to a description of any **Claim** or circumstances that could give rise to a **Claim**, the nature of any **Wrongful Acts** actually or allegedly committed or attempted, the nature of the alleged or potential damage, the identities of actual or potential claimants, and the manner in which the **Insureds** first became aware of any such **Claim** or circumstances that could give rise to a **Claim**.

C. Coverage Territory

The insurance afforded by this policy applies anywhere in the world.

D. Related Claims

All **Related Claims** will be deemed to be a single **Claim** which will be deemed to have been first made at the earlier of the following times:

1. When the earliest of such **Related Claims** was first made, or
2. At the earliest time at which notice was given under any policy of insurance of any act, error, omission, fact, circumstance, situation, transaction, event, decision or **Wrongful Act** underlying any such **Related Claim**.

E. Related Information Breaches

All **Information Breaches** that result in **Loss** covered by this policy that are the same, continuous, repeated or in a series of interrelated **Information Breaches** or are temporally, logically or causally connected by facts, circumstances, situations, transactions, events, utterances or decisions shall be deemed to be a single **Information Breach** happening at the time of the earliest of those **Information Breaches** during the policy period.

F. Changes in Exposure

1. If, during the policy period, a **Plan** merges into or consolidates with another plan not enumerated in ITEM 2 of the Policy Certificate, written notice thereof must be provided to the Insurer as soon as practicable. Coverage under this policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed, attempted or allegedly committed or attempted before such event by such **Plan**, by any natural person **Insureds** with respect to any **Plan** or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible, and for the **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation before such event. However, coverage under this policy will cease with respect to **Claims** for **Wrongful Acts** committed, attempted or allegedly committed or attempted after such event by any such **Insured** or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible and for the **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation after such event.

2. If, during the policy period, the responsibility for the **Administration** of a **Plan** is fully assumed by another person, entity or group of persons or entities, written notice thereof must be provided to the Insurer as soon as practicable. Coverage under this policy will continue in full force and effect with respect to **Claims for Wrongful Acts** committed, attempted or allegedly committed or attempted before such event by any natural person **Insureds** with respect to such **Plan** prior to such transfer of responsibilities or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible, and for such natural person **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation before such event. However, coverage under this policy will cease with respect to **Claims for Wrongful Acts** committed, attempted or allegedly committed or attempted after such event by any such natural person **Insured** or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible and for such natural person **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation after such event.
3. If any **Plan** is terminated, whether before or during the policy period, written notice thereof must be provided to the Insurer as soon as practicable. Coverage under this policy will continue to apply to **Claims for Wrongful Acts** committed, attempted or allegedly committed or attempted before such event by such **Plan**, by any natural person **Insureds** with respect to such **Plan** or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible, and to the **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation before such event. No coverage will be available under this policy, however, with respect to **Claims for Wrongful Acts** committed, attempted or allegedly committed or attempted after such event by any such **Insured** or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible, or for **Voluntary Compliance Program Expenditures** in connection with **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation after such event.

G. Other Insurance

All **Loss** payable under this policy will be specifically excess of and will not contribute with any other valid and collectible insurance, whether such other insurance is stated to be primary, contributing, excess (except insurance specifically in excess of this policy), contingent or otherwise.

H. Allocation

If, in connection with a **Claim**, both **Loss** covered by this policy and loss not covered by this policy are incurred, either because the **Claim** contains both covered and uncovered matters or because the **Claim** is made in part against persons or entities not insured hereunder, the **Insureds** and the Insurer will use their best efforts to determine a fair and appropriate allocation of amounts incurred in connection with such **Claim** as between **Loss** covered under this policy and loss not covered under this policy. The **Insureds** and the Insurer agree that, in determining such a fair and appropriate allocation, the parties will take into account the relative legal and financial exposures associated with any such covered and uncovered matters, as well as the relative legal and financial exposures of, and the relative benefits obtained in connection with the defense and/or settlement of any **Claim** by, the **Insureds** and other persons or entities not insured hereunder. If an agreement between the **Insureds** and the Insurer as to a fair and appropriate allocation cannot be reached, then the Insurer will pay or advance that portion of those amounts incurred in connection with such **Claim** which the **Insureds** and the Insurer agree constitutes **Loss** covered under this policy until a final allocation is agreed upon or determined pursuant to the provisions of this policy and applicable law.

I. Subrogation; Waiver of Recourse

1. In the event of payment under this policy, the Insurer will be subrogated to, and will be entitled to an assignment of, all of the **Insureds'** rights of recovery therefor. The **Insureds** will execute all papers

and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Insurer effectively to pursue and enforce such rights and to bring suit in the name of the **Insureds**.

2. If any premium for this policy is paid out of the assets of a **Plan**, the Insurer will have the right of recourse required by Section 410(b)(1) of ERISA, unless an **Insured** other than a **Plan** shall have paid the additional waiver of recourse premium set forth in ITEM 7(b) of the Policy Certificate.

J. Termination of Policy; No Obligation to Renew

1. This policy may not be cancelled or rescinded by the Insurer except for non-payment of premium.
2. This policy will terminate at the earliest of the following times:
 - a. upon receipt by the Insurer of written notice of termination from the **Insurance Representative**;
 - b. subject to Section IV.B, above, upon expiration of the policy period, as set forth in ITEM 3 of the Policy Certificate; or
 - c. at such other time as the Insurer and the **Insured** or the **Insurance Representative** may agree.
3. If the policy is terminated by the **Insurance Representative**, the Insurer will refund any unearned premium computed at customary short rates. Under all other circumstances, unearned premium, if any, will be computed pro rata. Refund of any unearned premium will be made either at the time of termination or as soon as practicable thereafter, but payment or tender by the Insurer of any unearned premium is not a condition of termination.
4. The Insurer will not be required to renew this policy upon its expiration. The offer of renewal terms and conditions or premiums different from those in effect prior to renewal will not constitute refusal to renew.

K. Representations and Severability

1. The **Insureds** represent that the Policy Certificate and statements contained in the written application for this policy are true, accurate and complete, and agree that this policy is issued in reliance on the truth of that representation, and that such Policy Certificate and statements, which are deemed to be incorporated into and to constitute a part of this policy, are the basis of this policy and are material to the Insurer's acceptance of this risk.
2. Such written application for coverage will be considered as a separate application for coverage by each **Insured** and, with respect to the Policy Certificate and statements contained in such written application for coverage, no declaration or statement in the application or knowledge possessed by any **Insured** will be imputed to any other **Insured** for the purpose of determining whether coverage is available.

L. No Action Against the Insurer

No action may be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy. No person or entity will have any right under this policy to join the Insurer as a party to any **Claim** to determine the liability of any **Insured**; nor may the Insurer be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

M. Bankruptcy or Insolvency of **Insured**

The Insurer will not be relieved of any of its obligations under the policy by the bankruptcy or insolvency of any of the **Insureds** or their estates.

N. Authorization and Notices

1. By acceptance of this policy, the **Insurance Representative** agrees to act on behalf of all **Insureds** with respect to all matters under this policy, including but not limited to the payment of premiums and the receipt of any return premiums, the giving and receiving of notices of **Claim** and of circumstances that may give rise to a **Claim** and all other notices and communications (except notices to effect the purchase of any extended reporting period), the effecting or accepting of any endorsements to or termination or non-renewal of this policy and the **Insureds** agree that the **Insurance Representative** will act on their behalf.
2. All notices to the Insurer of **Claims**, of circumstances that may give rise to **Claims**, of the **Insureds'** intent to participate in a **Voluntary Compliance Program** or any other notice required under the policy must be given in writing to the attention of the Claims Department via mail, fax or email.

Mail notices to: Encore Fiduciary
100 East Street, Suite 204
Vienna, VA 22180

Fax notices to: 571.730.4813

Email notices to: professionalclaims@encorefiduciary.com

O. Alteration and Assignment

No change in, modification of or transfer or assignment of interest under this policy will be effective unless made by written endorsement to this policy signed by an authorized representative of the Insurer or a designated affiliate thereof

P. Valuation and Foreign Currency

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or any element of **Loss** under this policy is stated in a currency other than United States of America dollars, payment under this policy will be made in United States of America dollars at the rate of exchange published in the Wall Street Journal on the date such final judgment is reached, the amount of such settlement is agreed upon or such element of **Loss** is due, respectively.

Q. Entire Agreement

The **Insureds** agree that this policy, including the application and any endorsements, constitutes the entire agreement between the **Insured** and the Insurer or any of its agents relating to this insurance.

IN WITNESS WHEREOF, Hudson Insurance Company has caused this policy to be signed by its President and Corporate Secretary at 100 William Street, New York, NY 10038 but this policy will not be effective unless the Insurer shall have issued a Policy Certificate as part of this policy.



President



Secretary

Policyholder Disclosure
Notice of Terrorism Insurance Coverage

Coverage for acts of terrorism is included in this policy. You (the Insured) are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2007, the definition of terrorism has changed. As defined in Section 102(1) of the Act: the term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is \$0.00 and does not include any charges for the portion of losses covered by the United States Government under the Act.

Nothing contained herein shall vary, alter or extend the terms, conditions and limitations of the policy except as stated above.

HUDSON INSURANCE COMPANY

Dan Aronowitz

Authorized Representative

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.