Managed Care Organization Errors and Omissions Liability Policy Declarations

☒ **Darwin National Assurance Company** **Policy Number:** 0303-5139

☐ **Darwin Select Insurance Company**

THIS IS A CLAIMS MADE AND REPORTED POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

Item 1. Name and Mailing Address of Named Insured:

HealthSCOPE Benefits, Inc.
27 Corporate Hill Drive
Little Rock, AR 72205

Item 2. Policy Period:

(a) Inception Date: December 31, 2009
(b) Expiration Date: December 31, 2010
At 12:01AM Standard Time at the Mailing Address shown above

Item 3. Limit of Liability:

(a)	$1,000,000 $3,000,000	Underwriter's maximum Limit of Liability for each Claim and in the Aggregate for all Claims.
(b)	$1,000,000 $3,000,000	Underwriter's maximum Limit of Liability for each Claim for Antitrust Activity and in the Aggregate for all Claims for Antitrust Activity
(c)	$100,000	Underwriter's maximum Limit of Liability for regulatory claims described in II(c)(4)(b) & (c)

Item 4. Retention:

$25,000

Item 5. Notices required to be given to the Insurer must be addressed to:

Darwin Professional Underwriters, Inc.
9 Farm Springs Road
Farmington, CT 06032

Item 6. Premium:

Total Premium: $32,022

Broker Fee: $250.00
Taxes: $1,290.88

This contract is registered and delivered as a surplus line coverage under the Surplus Lines Insurance Law, and it may in some respects be different from contracts issued by insurers in the admitted markets, and, accordingly, it may, depending upon the circumstances, be more or less favorable to an insured than a contract from an admitted carrier might be.

The protection of the Arkansas Property and Casualty Guaranty Act does not apply to this contract. A tax of four percent (4%) is required to be collected from the insured on all surplus lines premiums.

Item 7. Retroactive Date

January 1, 2007

Item 8. Extended Reporting Option(s):

12 months at 150%

Item 9. Endorsements Attached at Issuance:

1. s1006 DSI (04/2005) Service Of Suit
2. v1042 (12/2003) EDP/Computer Services Exclusion
3. v1043 (12/2003) Pollution, Asbestos, Nuclear Exclusion - Broad Endorsement
4. v1138 (03/2004) Additional Insured(s)/Co-Defendants
5. v1154 (03/2004) Punitive Damages Coverage
6. v1240 (10/2004) Schedule A - Insured Entities With Separate Retroactive Dates
7. v1263 (01/2006) Amend Exclusion (C)(7)
8. v1264 (06/2007) Amend Exclusion (C)(4)
9. v1328 (06/2007) Amend Exclusion (C)(4) - Additional Carveback
10. v1665 (11/2005) Amend Definition Of Managed Care Activity
11. v1672 (06/2007) Amend Exclusion (C)(4),Claims By Government As A Customer
12. v1683 (01/2006) Amend Exclusion A, Final Adjudication
13. v1754 (05/2006) Amend Defense And Settlement
14. v1804 (12/2007) Amend Definition Of "Insured Person"
15. v1986 (05/2007) Punitive Damages - Most Favorable Venue
16. v2048 (08/2007) Independent Contractors
17. v2403 (09/2009) Broadened Coverage For Personal Information Protection With Notification And Credit Monitoring Costs
18. v2416 (12/2008) Coverage For HIPAA Fines And Penalties
19. v2449 (05/2009) Managed Care Errors And Omissions Liability Insurance Endorsement

THESE DECLARATIONS, THE POLICY FORM, ANY ENDORSEMENTS AND THE APPLICATION CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE INSURER AND THE INSURED RELATING TO THIS INSURANCE.

In Witness Whereof, the Insurer has caused this Policy to be executed by its authorized officers.

SECRETARY

PRESIDENT

AUTHORIZED SIGNATURE

ENDORSEMENT NO. 1

SERVICE OF SUIT

This Endorsement, effective at 12:01AM on December 31, 2009, forms parts of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the Statute, or his successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured(s) or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the below named as the person whom the said officer is authorized to mail process or a true copy thereof.

It is further agreed that service of process in such suit may be made upon Timothy J. Curry, Secretary, or his nominee, at 9 Farm Springs Road, Farmington, CT 06032 and that in any suit instituted against any one of them upon this policy, the Company will abide by the final decision of such Court or any Appellate Court in the event of an appeal.

NOTHING HEREIN SHALL VARY, ALTER, WAIVE, OR EXTEND ANY OF THE TERMS, PROVISIONS, REPRESENTATIONS, CONDITIONS OR AGREEMENTS OF THE POLICY OTHER THAN AS STATED ABOVE.

ENDORSEMENT NO. 2

EDP/COMPUTER SERVICES EXCLUSION

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, no coverage will be available for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(a) The design, manufacture, assembly, installation, modification or sale of any computer hardware, software or peripheral equipment or device, in whole or in part, by the Insured or by any entity owned by, controlled by, or affiliated with the Insured through any common ownership;

(b) any electronic funds transfer, automated bank transaction or automated securities quotation or transaction, including any authentication or other services ancillary thereto;

(c) any breakdown or failure to perform, in whole or in part, of any computer hardware, software or peripheral equipment or device, including any breakdown, interruption or failure of any utility, telephone line, data transmission line or other infrastructure necessary for the operation of any computer hardware, software or peripheral equipment or device;

(d) the analysis, design, development, programming or any other aspect of providing electronic data processing, computer time-sharing or computer back-up services or facilities to third parties, including the rendering of advice, training or opinions to third parties with respect to electronic data processing, computer time-sharing or computer back-up services or facilities or any aspect thereof; or

(e) any introduction or alteration of any code, program or data causing any loss of access to or corruption or malfunction of any computer hardware, software, peripheral equipment or device or data, in whole or in part;

provided that, this Exclusion shall not apply to any **Claim** for **Medical Information Protection**, **Provider Selection**, **Utilization Review** or **Claims Services** if performed by an **Insured**.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 3

POLLUTION, ASBESTOS, NUCLEAR EXCLUSION – BROAD ENDORSEMENT

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, no coverage will be available under this Policy for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(a) any actual, alleged, or threatened, exposure to, generation, storage, transportation, discharge, emission, dispersal, escape, release, seepage, treatment, removal, disposal, processing, or handling of any solid, liquid, gaseous, or thermal irritant, pollutant, or contaminant, including without limitation smoke, vapors, soot, fumes, acids, alkalis, chemicals, (toxic or otherwise), waste (infectious or otherwise), and medical and pharmaceutical supplies; or any regulation, order, direction, or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing; or any action taken in contemplation of anticipation of any such regulation, order, direction or request.

(b) any actual or alleged property damage, bodily injury, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury at any time arising out of or resulting from the manufacture of, mining of, use of, sales of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust;

(c) any obligation of the **Insured** to indemnify any party for any actual or alleged property damage, bodily injury, sickness, disease, occupational disease, disability, shock, death, mental anguish, or mental injury at any time arising out of the manufacture of, mining of, use of, sales of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;

(d) any obligation of the **Insured** to defend any **Claim** seeking damages for any actual or alleged property damage, bodily injury, sickness, disease, occupational disease, disability, shock, death, mental anguish, or mental injury at any time arising our of the manufacture of, mining of, use of, sales of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;

(e) any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 4

ADDITIONAL INSURED(S) / CO-DEFENDANTS

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is understood and agreed that:

The term **Insured** shall include, and coverage will be available under this Policy for **Loss** from **Claims** against, the following persons or entities listed below (hereinafter referred to as "Additional Insured(s)"), solely with respect to **Claims** for any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by any **Insured**, other than an Additional Insured**,** and, provided that such **Claim** is made and continuously maintained against at least one **Insured,** other than an Additional Insured:

Central Benefits Mutual Insurance Company

All other terms conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 5

PUNITIVE DAMAGES COVERAGE

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that the definition of "**Loss**" in Section IV, DEFINITIONS, paragraphs (J) and (J)(1) is amended to read as follows:

(J) "**Loss**" means **Defense Expenses** and any monetary amount which an Insured is legally obligated to pay as a result of a **Claim**; including punitive, exemplary or multiplied damages (hereafter referred to as "Punitive Damages") awarded in connection with any **Claim** covered by this Policy, other than **Claims** for **Antitrust Activity,** and only if such Punitive Damages are insurable under applicable law. **Loss** shall not include:

(1) fines, penalties, taxes; provided that if fines, penalties or Punitive Damages are awarded in connection with any **Claim** for **Antitrust Activity**, the maximum amount payable by the **Insurer** is the amount indicated in ITEM 3(b) of the Declarations (which amount is part of, and not in addition to, the amount listed in ITEM 3(a) of the Declarations), but only if such fines, penalties or Punitive Damages are insurable under applicable law.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 6

SCHEDULE A
INSURED ENTITIES WITH SEPARATE RETROACTIVE DATES

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No. 0303-5139
Issued to HealthSCOPE Benefits, Inc.
Issued by Darwin National Assurance Company

In consideration of the premium charged, the term **Insured Entity** will include the following, but coverage will only be provided for **Wrongful Acts** which took place on or after the respective date(s) set forth below:

INSURED ENTITY	RETROACTIVE DATE
The Plan Handlers, Inc.	January 1, 2007
Central Benefits Administrators, Inc.	January 1, 2007
Edward B. Morris Associates, Inc.	January 1, 2007
CenBen USA, Inc.	January 1, 2007
Access Health Source, Inc.	December 31, 2008
Access HealthSource Administrators, Inc.	December 31, 2008
Access Administrators, Inc. dba Foresight TPA, Inc.	December 31, 2008
Advantage Care Network, Inc.	December 31, 2008
Total Health, Joint Venture	December 31, 2009

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 7

AMEND EXCLUSION (C)(7)

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that paragraph (7) of Section II(C) of the Policy is amended to read as follows:

(7) based upon, arising out of, resulting from, or in any way involving any actual or alleged:

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 8

AMEND EXCLUSION (C)(4)

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that exclusion (C)(4) under Section II. EXCLUSIONS, of the Policy is amended to add an additional subparagraph, which shall read as follows:

> "EXCLUSION(C)(4) shall not apply to any **Claim** arising solely out of an individual enrollee benefit dispute in a Medicare, Medicaid or other health plan sponsored by the state or federal government."

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 9

AMEND EXCLUSION (C)(4) – ADDITIONAL CARVEBACK

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that an additional subparagraph is added to Exclusion (C)(4) of Section II of the Policy, as follows:

> "EXCLUSION (C)(4) shall not apply to **Defense Expenses** incurred in connection with a **Claim** arising from a disciplinary proceeding initiated against a medical director who is an **Insured Person** under the Policy, provided that the **Claim** is also in connection with **Utilization Review**."

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 10

AMEND DEFINITION OF MANAGED CARE ACTIVITY

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that the definition of "**Managed Care Activity"** contained in Section IV of the Policy is amended by adding the following sentence at the end of that paragraph:

Managed Care Activity shall include all such services and activities listed above, whether provided on paper, in person, electronically, or via any other medium.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 11

AMEND EXCLUSION (C)(4),
CLAIMS BY GOVERNMENT AS A CUSTOMER

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that Section II, EXCLUSIONS, Subsection (C)(4), is amended to add a new subparagraph, as follows:

> "EXCLUSION (C)(4) shall not apply to any **Claim,** brought by a federal or state governmental, regulatory or administrative agency solely in its capacity as a customer or client of the **Insured**, and which arises out a **Wrongful Act** which is otherwise covered under this Policy."

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 12

AMEND EXCLUSION A, FINAL ADJUDICATION

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that Section II, Exclusion (A) is amended to read as follows:

(A) Except for **Defense Expenses,** the **Underwriter** shall not pay **Loss** for any **Claim** brought about or contributed to by:

(1) any willful misconduct or dishonest, fraudulent, criminal or malicious act, error or omission by any **Insured;**

(2) any willful violation by any **Insured** of any law, statute, ordinance, rule or regulation; or

(3) any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled.

For the purposes of determining the applicability of this EXCLUSION (A); no **Wrongful Act** of any **Insured** shall be imputed to any other **Insured**. Determination of the applicability of this EXCLUSION (A) may be made by an admission or final adjudication in a proceeding constituting the **Claim,** or in a proceeding separate from or collateral to any proceeding constituting the **Claim**.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 13

AMEND DEFENSE AND SETTLEMENT

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that Section III. CONDITIONS, paragraph D(1)(b), is amended to read as follows:

(b) Eighty percent (80%) of any **Loss** and/or **Defense Expenses** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining Twenty percent (20%) of **Loss** and/or **Defense Expenses** in excess of the Settlement Amount will be carried by the **Insured** at its own risk and will be uninsured.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 14

AMEND DEFINITION OF "INSURED PERSON"

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that Section IV. DEFINITIONS, the definition of "**Insured Person**" is amended to read as follows:

(I) **"Insured Person"** means any past, present or future:

(1) employee, director, officer, trustee, member of the board of managers, governor or medical director of, or volunteer, for any **Insured Entity**;

(2) member of, or provider of administrative support to, any review board or committee of any **Insured Entity**; or

(3) any individual authorized by an **Insured Entity** to conduct **Provider Selection** or **Utilization Review** on behalf of the **Insured Entity**, but only while such individual is acting within the scope and capacity of his or her duties for the **Insured Entity**.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** in his or her capacity as such will be deemed to be a **Claim** against such **Insured Person**.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 15

PUNITIVE DAMAGES – MOST FAVORABLE VENUE

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed:

For the purpose of determining the insurability of punitive, exemplary or multiplied damages (hereinafter "Punitive Damages") under this Policy, the **Underwriter** and the **Insureds** agree that the laws of the jurisdiction most favorable to the insurability of Punitive Damages shall control, provided that such jurisdiction:

(a) is the location of the court which awarded or imposed such Punitive Damages; or

(b) is where the **Insured Entity** is incorporated or otherwise organized or has a place of business; or

(c) is where the **Underwriter** is incorporated or has its principal place of business.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 16

INDEPENDENT CONTRACTORS

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that:

In consideration of the premium charged, it is hereby agreed that the term "**Insured**" in Section IV. DEFINITIONS of the Policy, is amended to include independent contractors retained by the **Insured Entity**, but only while providing services pursuant to a written contract or agreement with the **Insured Entity** and acting within the scope of his or her enunciated duties or authority on behalf of the **Insured Entity**.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 17

BROADENED COVERAGE FOR PERSONAL INFORMATION PROTECTION WITH NOTIFICATION AND CREDIT MONITORING COSTS

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is understood and agreed that:

1. The definition of "**Medical Information Protection**," as used throughout the Policy, shall be deemed deleted and replaced with the term "**Personal Information Protection**," as defined below.

2. The following definitions are hereby added to Section IV. DEFINITIONS:

   "**Personal Information Protection**" means maintaining the confidentiality of, regardless of the medium in which it is stored or transferred, personal information relating to **Medical Services** performed or obtained in the provision of **Managed Care Activities**, that is in the care, custody and control of the **Insured Entity**, and limiting the release or use of such information in conformance with requirements of law.

   "**Notice and Credit Monitoring Costs**" means costs incurred by the **Named Insured** for notification to third parties or credit monitoring for third parties, arising from an act, error or omission in the performance of or failure to perform **Personal Information Protection** by an **Insured Entity** or an **Insured Person**, which takes place during the **Policy Period**. Such costs must be incurred by the **Named Insured** pursuant to federal or state law, and are not otherwise eligible for coverage as **Loss** from a **Claim**.

3. As a condition precedent to coverage under this Policy for **Notice and Credit Monitoring Costs**, they must be reported to the **Insurer** as soon as practicable after the act, error or omission takes place which results in such costs, but in no event later that thirty (30) days after the **Named Insured** first incurs such costs. There is no requirement that a **Claim** be made against an **Insured** for coverage for such **Notice and Credit Monitoring Costs** to be effective.

4. The most the **Insurer** will pay for all such **Notice and Credit Monitoring Costs** shall be $100,000, which amount shall be part of, and not in addition to, the Aggregate Limit of Liability for all Claims, as set forth in Item 3(a) of the Declarations.

5. Coverage provided for **Notice and Credit Monitoring Costs** shall not be subject to the Retention set forth in Item 4 of the Declarations.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 18

COVERAGE FOR HIPAA FINES AND PENALTIES

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged:

1. Section IV. DEFINITIONS J "**Loss**" is amended to include fines and penalties imposed under the Health Insurance Portability and Accountability Act ("HIPAA") or any similar federal, state or local privacy laws or regulations or in **Claims** for **Antitrust Activity**, but only if such fines and penalties are insurable under applicable law most favorable to the insurability of such fines and penalties; provided the most the **Insurer** shall pay for HIPAA fines and penalties is $25,000, in the aggregate, such amount to be part of and not in addition to the Limit of Liability set forth in the Declarations;

2. SECTION II. EXCLUSIONS C(4) is amended to include the following subparagraph (e):

   (e) any **Claim** brought under the Health Insurance Portability and Accountability Act (HIPAA) or any similar federal, state or local privacy law or regulation;

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

ENDORSEMENT NO. 19

MANAGED CARE ERRORS AND OMISSIONS LIABILITY INSURANCE ENDORSEMENT

This Endorsement, effective at 12:01 a.m. on December 31, 2009, forms part of

Policy No.	0303-5139
Issued to	HealthSCOPE Benefits, Inc.
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed:

1. **Amend Claims Reporting**

Section III. CONDITIONS, Subsection (B)(1), is amended to read as follows:

"(1) If, during the **Policy Period** or any applicable Extended Reporting Period, a member of the Risk Management Department, Legal Department or a member of Senior Management of the **Insured Entity**, becomes aware of a **Claim**, the **Insureds** must, as a condition precedent to any right to coverage under this Policy, give the **Underwriter** written notice of such **Claim** as soon as practicable after any such person first becomes aware of the **Claim** and in no event later than:

(a) with respect to a **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or

(b) with respect to a **Claim** first made during an Extended Reporting Period, ninety (90) days after any such person first becomes aware of the **Claim**."

2. **Good Samaritan Coverage**

Section IV. DEFINITIONS, Subsection (W) "**Wrongful Act**" is amended by adding the following paragraph (4):

"(4) any actual or alleged act, error or omission by any **Insured**, in connection with acts or services provided or failed to be provided in rendering emergency treatment, without remuneration, at the scene of an accident, medical crisis or disaster."

3. **Coverage for Plaintiff's Attorneys Fees**

Section IV. DEFINITIONS, Subsection (J) "**Loss**" is amended to also include plaintiff's attorneys fees where awarded by the court in a covered **Claim** under this Policy.

4. **Expand "Medical Information Protection"**

Section IV. DEFINITIONS, Subsection (L) "**Medical Information Protection**" is deleted and replaced by the term "**Personal Information Protection**," as defined below, throughout the Policy.

"Personal Information Protection" means maintaining the confidentiality of, regardless of the medium, information personal and confidential information about an individual obtained in the provision of **Medical Services** or **Managed Care Activities**, and limiting the release or use of such information in conformance with requirements of law.

5. **Amend Definition of "Utilization Review," by and on behalf of the Insured**

Section IV. DEFINITIONS, Subsection (U) "**Utilization Review**" is amended as follows:

"(U) "**Utilization Review**" means the process of evaluating the appropriateness, or necessity of **Medical Services** for purposes of determining whether payment or coverage for such **Medical Services** will be authorized or paid for under any health care plan, but only if performed by or on behalf of an **Insured**. In clarification and not in limitation of the foregoing, **Utilization Review** shall include prospective review of proposed payment or coverage for **Medical Services**, concurrent review of ongoing **Medical Services**, retrospective review of already rendered **Medical Services** or already incurred costs, disease management, and case management."

6. **Amend Definition of "Insured Person," Include Experts and Advisors to Board and Committees**

Section IV. DEFINITIONS, Subsection I, paragraph (2) of "**Insured Person**" is amended as follows:

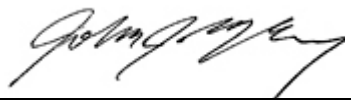
"(2) individuals who are members of, or providers of administrative, professional, advisory or expert support to, any review board or committee of any **Insured Entity**. "

7. **Broad Definition of Managed Care Activities**

"**Managed Care Activity**" as defined in Section IV, DEFINITIONS, Paragraph (K) of the Policy, is amended read as follows:

"(K) "**Managed Care Activity**" means any of the following services or activities: **Provider Selection**; **Utilization Review**; advertising, marketing, selling, or enrollment for health care, workers' compensation, life, dental, vision, short–term disability, long-term disability, behavioral health, pharmacy benefit and consumer-directed health plans; **Claim Services**; establishing health care provider networks; reviewing the quality of **Medical Services** or providing quality assurance; design and/or implementation of financial incentive plans; wellness or health promotion education; development or implementation of clinical guidelines, practice parameters or protocols; triage for payment of **Medical Services**; and services or activities performed in the administration or management of health care, workers' compensation, life, dental, vision, disability and pharmacy benefit plans."

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

Managed Care Errors and Omissions Liability Insurance Policy

THIS IS A CLAIMS MADE AND REPORTED POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES, SETTLEMENTS OR JUDGMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. PLEASE READ THE ENTIRE POLICY CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Underwriter**, including the statements made in the **Application,** the **Underwriter** and the **Insureds**, subject to all of the terms, conditions and limitations of this Policy and any endorsements thereto, agree as follows:

I. INSURING AGREEMENT

The **Underwriter** will pay on behalf of any **Insured** any **Loss** which the **Insured** is legally obligated to pay as a result of any **Claim** that is first made against the **Insured** during the **Policy Period** or during any applicable Extended Reporting Period. As part of and subject to the Limit of Liability stated in ITEM 3(a) of the Declarations, the **Underwriter** will have the right and duty to defend any **Claim** made against any **Insured** which is covered by this Policy, even if the allegations of such **Claim** are groundless, false or fraudulent.

II. EXCLUSIONS

(A) Except for **Defense Expenses,** the **Underwriter** shall not pay **Loss** for any **Claim** brought about or contributed to by:

(1) any willful misconduct or dishonest, fraudulent, criminal or malicious act, error or omission by any **Insured;**

(2) any willful violation by any **Insured** of any law, statute, ordinance, rule or regulation; or

(3) any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled.

For the purposes of determining the applicability of this EXCLUSION (A); no **Wrongful Act** of any **Insured** shall be imputed to any other **Insured**. Determination of the applicability of this EXCLUSION (A) may be made by admission, in a proceeding constituting the **Claim,** or in a proceeding separate from or collateral to any proceeding constituting the **Claim**.

(B) No coverage will be available under this Policy for any actual or alleged act, error or omission by an **Insured** in the rendering of, or failure to render, **Medical Service**; provided, that this EXCLUSION (B) shall not apply to any portion of a **Claim** alleging, under statute, rule, regulation or common law tort, that the performance of any **Managed Care Activity** by an **Insured** constitutes the rendering of **Medical Services**.

(C) The **Underwriter** shall not pay any **Loss**, including **Defense Expenses**, for any **Claim**:

(1) based upon, arising out of, resulting from, or in any way involving any actual or alleged:

(a) damage to, destruction of or loss of use of, any tangible property; or

(b) ownership, operation, use, maintenance, loading or unloading of any motor vehicle, trailer, watercraft, aircraft or helipad;

(2) based upon, arising out of, resulting from, or in any way involving any actual or alleged bodily injury, sickness, disease or death of any employee of any **Insured** arising out of or in the course of employment by the **Insured**;

(3) made by, on behalf of, or in the name or right of, or for the benefit of, any prospective, current or former owner of any legal or equitable interest in an **Insured Entity** in any form, including, but not limited to, stocks, shares, bonds, debentures, options, derivatives, partnership interests, limited liability company interests, any other form of debt or equity instruments or any other form of ownership interests, in connection with such owner's interest therein;

(4) made by or on behalf of any federal or state governmental, regulatory or administrative agency, whether such **Claim** is brought in the name of such agency or by or on behalf of such agency in the name of any other individual or entity;

(a) EXCLUSION (C)(4) shall not apply to any **Claim** arising solely out of **Antitrust Activity**;

(b) EXCLUSION (C)(4) shall not apply to **Defense Expenses,** up to the amount shown ITEM 3(c) of the Declarations (which amount is part of, and not in addition to, the amount shown in ITEM 3 (a) of the Declarations) for a **Claim** that seeks modification of the amount of any benefits payable under any managed care plan or program;

(c) EXCLUSION (C)(4) shall not apply to **Defense Expenses,** up to the amount shown in ITEM 3(c) of the Declarations (which amount is part of, and not in addition to, the amount shown in ITEM 3 (a) of the Declarations), for a **Claim** that seeks injunctive, declaratory, or equitable relief;

(d) EXCLUSION (C)(4) shall not apply to any **Claim** made by or on behalf of any city, county or municipal governmental, regulatory or administrative agency; provided that such **Claim** is not made at the direction of, on behalf of, or with the assistance of any federal or state governmental, regulatory or administrative agency.

(5) made by, on behalf of, or in the name or right of, or for the benefit of, any **Insured**; provided, that this EXCLUSION (C)(5) shall not apply to any **Claim** for **Provider Selection**, **Utilization Review** or **Claim Services** or to any **Claim** brought and maintained independently by an **Insured** in such **Insured's** capacity as a participant in a health care or workers' compensation plan administered or managed by the **Insured Entity**;

(6) for any actual or alleged express or assumed liability of any **Insured** under an indemnification agreement; provided, that this EXCLUSION (C)(6) shall not apply to any tort liability that would have attached to the **Insured** in the absence of such agreement and is otherwise insured under this Policy;

(7) based upon, arising out of, resulting from, or in any way involving any actual or alleged:

(a) failure to obtain, implement, effect, comply with, provide notice under or maintain any form, policy, plan or program of insurance, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship or bond;

(b) commingling or mishandling of funds with dishonest intent;

(c) failure to collect or pay premiums, commissions, brokerage charges, fees or taxes; or

(8) based upon, arising out of, resulting from, or in any way involving any fact, circumstance, situation, transaction, event, **Wrongful Act** or series of facts, circumstances, situations, transactions, events or **Wrongful Acts**:

(a) underlying or alleged in any litigation or administrative or regulatory proceeding brought prior to and/or pending as of the Inception Date stated in ITEM 2(a) of the Declarations:

(i) to which any **Insured** is or was a party; or

(ii) with respect to which any **Insured,** as of the Inception Date, knew or should reasonably have known that an **Insured** would be made a party thereto;

(b) which was the subject of any notice given prior to the Inception Date under any other policy of insurance or plan or program of self-insurance; or;

(c) which was the subject of any **Claim** made prior to the Inception Date;

if, however, this Policy is a renewal of one or more policies previously issued by the **Underwriter** to the **Insured Entity**, and the coverage provided by the **Underwriter** to the **Insured Entity** was in effect, without interruption, for the entire time between the inception date of the first such other policy and the Inception Date of this Policy, the reference in this EXCLUSION (C)(8) to the Inception Date will be deemed to refer instead to the inception date of the first policy under which the **Underwriter** began to provide the **Insured Entity** with the continuous and uninterrupted coverage of which this Policy is a renewal;

(9) against:

(a) any **Subsidiary;**

(b) any other entity acquired by the **Insured Entity** whether by merger, consolidation, asset acquisition or otherwise; or

(c) any **Insured Person** of any entity in (a) or (b) above:

for any **Wrongful Act** committed during any time in which such entity is not a **Subsidiary**, or at any time before any such acquisition by the **Insured Entity**; or

(10) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged **Employment Practices**; provided, that this EXCLUSION (C) (10) shall not apply to any **Claim** for **Provider Selection**, **Claim Services** or **Utilization Review**.

III. CONDITIONS

(A) **Limit of Liability, Retention**:

(1) The amount stated in ITEM 3(a) of the Declarations shall be the maximum aggregate Limit of Liability of the **Underwriter** for all **Loss**, including **Defense Expenses**, resulting from all **Claims** for which this Policy provides coverage, regardless of the number of **Claims**, the number of persons or entities included within the definition of **Insured**, or the number of Claimants.

(2) **Defense Expenses** are part of and not in addition to the Underwriter's Limit of Liability, and payment of **Defense Expenses** by the Underwriter will reduce its Limit of Liability.

(3) The obligation of the **Underwriter** to pay **Loss**, including **Defense Expenses**, will only be in excess of the applicable retention set forth in ITEM 4 of the Declarations. The **Underwriter** will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any retention amount on behalf of any **Insured**, although the **Underwriter** will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the **Underwriter** any amounts so paid.

(4) The obligation of the **Underwriter** to pay **Defense Expenses** with respect to certain **Claims** may be limited as provided in EXCLUSION (C)(4) or in any endorsement to this Policy.

(B) **Reporting of Claims and Circumstances**:

(1) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against any **Insured,** the **Insureds** must, as a condition precedent to any right to coverage under this Policy, give the Underwriter written notice of such **Claim** as soon as practicable thereafter and in no event later than:

(a) with respect to a **Claim** made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or

(b) with respect to a **Claim** made during an Extended Reporting Period, ninety (90) days after such **Claim** is first made.

(2) If, during the **Policy Period**, an **Insured** first becomes aware of any **Wrongful Act** which may subsequently give rise to a **Claim**, and:

(a) gives the **Underwriter** written notice of such **Wrongful Act** with full particulars as soon as practicable thereafter but in any event before the end of the **Policy Period**; and

(b) requests coverage under this Policy for any **Claim** subsequently arising from such **Wrongful Act** as soon as possible practicable after such **Claim** is made;

then any **Claim** subsequently made against the **Insured** arising out of such **Wrongful Act** shall, subject to CONDITION (C) below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under (2)(a) above must include, without limitation, a description of the **Wrongful Act**, the identities of the potential claimants and involved **Insureds**, the injury or damages which have resulted and/or may result from such **Wrongful Act**, the manner in which the **Insured** first became aware of such **Wrongful Act**, and the reasons why the **Insured** believes the **Wrongful Act** is likely to result in a **Claim** being made.

(C) **Related Claims Deemed Single Claim; Date Claim Made**:

All **Related Claims,** whenever made, shall be deemed to be a single **Claim** and shall be deemed to have been first made on the earliest of the following dates:

(1) the date on which the earliest **Claim** within such **Related Claims** was received by an **Insured**; or

(2) the date on which written notice was first given to the **Underwriter** of a **Wrongful Act** which subsequently gave rise to any of the **Related Claims**, regardless of the number and identity of claimants, the number and identity of **Insureds** involved, or the number and timing of the **Related Claims**, even if the **Related Claims** comprising such single **Claim** were made in more than one **Policy Period**.

(D) **Defense and Settlement**:

(1) No **Insured** may incur any **Defense Expenses** or admit liability for or settle any **Claim** without the **Underwriter's** written consent. The **Underwriter** will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the **Underwriter** deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the **Underwriter's** recommendation, then, subject to the Underwriter's maximum aggregate Limit of Liability set forth in ITEM 3(a) of the Declarations, the Underwriter's liability for such **Claim** will not exceed:

(a) the amount for which such **Claim** could have been settled by the Underwriter plus **Defense Expenses** up to the date the **Insureds** refused to settle such **Claim** (the "Settlement Amount"); plus

(b) sixty percent (60%) of any **Loss** and/or **Defense Expenses** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining forty percent (40%) of **Loss** and/or **Defense Expenses** in excess of the Settlement Amount will be carried by the **Insured** at its own risk and will be uninsured.

(2) The **Underwriter** will have no obligation to pay **Loss**, including **Defense Expenses**, or to defend or continue to defend any **Claim** after the **Underwriter's** maximum aggregate Limit of Liability, as set forth in ITEM 3(a) of the Declarations, has been exhausted by the payment of **Loss**, including **Defense Expenses**. If the **Underwriter's** maximum aggregate Limit of Liability, as set forth in ITEM 3(a) of the Declarations, is exhausted by the payment of **Loss**, including **Defense Expenses**, the premium will be fully earned.

(E) **Assistance and Cooperation**:

In the event of a **Claim**, the **Insureds** shall provide the **Underwriter** with all information, assistance and cooperation that the **Underwriter** reasonably requests. At the **Underwriter's** request, the **Insureds** shall assist in investigating, defending and settling **Claims** and in the conduct of actions, suits, appeals or other proceedings, including but not limited to attending trials, hearings and depositions, securing and giving evidence, and obtaining the attendance of witnesses.

(F) **Subrogation**:

In the event of any payment hereunder, the **Underwriter** shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the **Underwriter** effectively to bring suit in their name. The **Insureds** shall do nothing that may prejudice the **Underwriter's** position or potential or actual rights of recovery. The obligations of the **Insureds** under this CONDITION (F) shall survive the cancellation or other termination of this Policy.

(G) **Other Insurance; Other Indemnification**:

(1) This Policy shall be excess of an shall not contribute with:

(a) any other insurance or plan or program of self-insurance (whether collectible or not), unless such other insurance or self-insurance is specifically stated to be in excess of this Policy; and

(b) any indemnification to which an **Insured** is entitled from any entity other than another **Insured.**

This Policy shall not be subject to the terms of any other policy of insurance or plan or program of self-insurance.

(2) If any other policy or policies issued by the Underwriter or any of its affiliated companies, or by any predecessors or successors of the Underwriter or its affiliated companies, shall apply to any **Claim**, then the aggregate limit of liability with respect to all **Loss** under this Policy and all covered loss under such other policies shall not exceed the highest applicable limit of liability, subject to its applicable deductible or retention, that shall be available under any one of such policies, including this Policy. This CONDITION (G)(2) shall not apply with respect to any other policy which is written only as specific excess insurance over the Limit of Liability of this Policy.

(H) **Mergers, Acquisitions, or Newly Created Entities**:

If, during the **Policy Period**, the **Named Insured** or any **Insured Entity** acquires or creates another entity or **Subsidiary** or becomes a member of a joint venture or general/partner in a general partnership which is not designated on SCHEDULE A, or if any Insured Entity merges or consolidates with another entity which is not designated on SCHEDULE A such that the **Insured Entity** is the Surviving entity (any such acquired, created, merged or consolidated entity hereinafter referred to as an "Acquired Entity"), then for a period of ninety (90) days after the effective date of the transaction, such Acquired Entity shall be included within the term "**Insured Entity**" with respect to **Wrongful Acts** committed or allegedly committed by the Acquired Entity or its **Insured Persons** after the effective date of the transaction. Upon the expiration of the ninety (90) day period, there will be no coverage under this Policy for **Wrongful Acts** committed or allegedly committed by the Acquired Entity or its **Insured Persons** unless within the ninety (90) day period:

(1) The **Named Insured** gives the **Underwriter** such information regarding the transaction as the **Underwriter** requests; and

(2) The **Underwriter** has specifically agreed by written endorsement to this Policy to provide coverage with respect to such Acquired entity and its **Insured Persons**, and the **Named Insured** accepts any terms, conditions, exclusions, or limitation, including payment of additional premium, as the **Underwriter**, in its sole discretion, imposes in connection with the transaction.

(I) **Sales or Dissolution of Insured Entities; Cessation of Business:**

(1) If, during the **Policy Period**:

(a) the **Named Insured** is dissolved, sold, acquired by, merged into or consolidated with another entity such that the **Named Insured** is not the surviving entity, or such that any person, entity or affiliated group of persons or entities obtains:

(i) the right to elect or appoint more than fifty percent (50%) of the **Named Insured's** directors, trustees or member managers, as applicable; or

(ii) more than fifty percent (50%) of the **Named Insured's** equity or assets;

(b) the **Named Insured** ceases to do business for any reason; or

(c) a receiver, liquidator, conservator, trustee, rehabilitator or similar administrator is appointed for the **Named Insured;**

then in any such event (any of which events is referred to in this CONDITION (I) as a "Material Event"), coverage under this Policy for all **Insureds** shall continue in full force and effect until the Expiration Date or any earlier cancellation date, but this Policy shall apply only to **Wrongful Acts** committed or allegedly committed before such Material Event. There will be no coverage under this

Policy with respect to any **Claim** against any Insured based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** committed or allegedly committed on or after the date of such Material Event.

(2) If, during the **Policy Period,** any **Insured Entity** other than the **Named Insured** is involved in a Material Event coverage under this Policy for **Wrongful Acts** committed **or** allegedly committed before such Material Event by such **Insured Entity** or its **Insured Persons** shall continue in full force and effect until the Expiration Date or any earlier cancellation date. There will be no coverage under this Policy with respect to any Claim against such **Insured Entity** or its **Insured Persons** based upon, arising out of, directly or indirectly resulting from, in consequence of or involving any way involving any **Wrongful Act** of such **Insured Entity** or its **Insured Persons** committed or allegedly committed on or after the date of such Material Event. Coverage under this Policy shall continue in full force and effect for all other **Insureds**.

(J) **Cancellation; Non-Renewal**:

(1) The **Underwriter** may not cancel this Policy except for the **Named Insured's** failure to pay a premium when due, in which case twenty (20) days' written notice will be given to the **Named Insured** by the **Underwriter**.

(2) The **Named Insured** may cancel this Policy prospectively only by mailing the **Underwriter** written notice stating when thereafter such cancellation shall be effective. In such event, the earned premium shall be computed in accordance with the customary short rate table and procedure.

(3) Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

(4) The **Underwriter** will not be required to renew this Policy upon its expiration. The **Underwriter** will provide the **Named Insured** with sixty (60) days notice of any non-renewal.

(K) **Extended Reporting Periods**:

If this Policy is canceled for any reason other than non-payment of premium or is not renewed by the **Underwriter** or the **Named Insured**, an additional period of time during which **Claims** may be reported under this Policy (an "Extended Reporting Period") shall be made available as described in this CONDITION (K), but any such Extended Reporting Period shall apply only to **Claims** for **Wrongful Acts** committed or allegedly committed before the effective date of such cancellation or non-renewal ("Termination Date"). No Extended Reporting Period shall in any way increase the **Underwriter's** Limit of Liability as stated in ITEM 3(a) of the Declarations, and the **Underwriter's** maximum aggregate Limit of Liability for all **Loss** from all **Claims** first made during the **Policy Period** or any Extended Reporting Period shall not exceed the Limit of Liability stated in ITEM 3(a) of the Declarations. The Extended Reporting Period will apply as follows:

(1) An Extended Reporting Period of ninety (90) days beginning as of the Termination date, will apply automatically and requires no additional premium;

provided, that such Extended Reporting Period will remain in effect only as long as no other policy of insurance is in effect that would apply to any **Claim** made during such Extended Reporting Period.

(2) The **Named Insured** may purchase an additional Extended Reporting Period for the period of time stated in ITEM 8 of the Declarations by notifying the Underwriter in writing of its intention to do so no later than thirty (30) days after the Termination Date. The additional premium for this additional Extended Reporting Period shall be equal to the amount stated in ITEM 8 of the Declarations and must be paid no later than thirty (30) days after the Termination Date.

If no election to purchase an additional Extended Reporting Period is made as described in CONDITION (K)(2) above or if the additional premium therefor is not paid within thirty (30) days after the Termination Date, there will be no right to purchase an additional Extended Reporting Period at any later time. Failure to elect to purchase an additional Extended Reporting Period or to pay the additional premium therefor will not affect the application of the automatic Extended Reporting Period described in CONDITION (K)(1) above.

(L) **Representations and Warranties; Incorporation of Application**:

The **Insureds** represent and warrant that the particulars and statements contained in the **Application** attached to this Policy are true, accurate and complete, and agree that:

(1) this Policy is issued and continued in force by the **Underwriter** in reliance upon the truth of such representation;

(2) those particulars and statements are the basis of this Policy; and

(3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.

No knowledge or information possessed by any **Insured** shall be imputed to any other **Insured** for the purposes of this CONDITION (L), except for material facts or information known to the person or persons who signed the **Application**. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy shall be void with respect to any **Insured** who knew of such untruth, misrepresentation or omission, or to whom such knowledge is imputed.

(M) **Action against Underwriter**:

(1) No action shall be taken against the Underwriter by any **Insured** unless, as conditions precedent thereto, the **Insureds** have fully complied with all of the terms of this Policy and the amount of the **Insureds'** obligation to pay has been finally determined either by judgment against the **Insureds** after adjudicatory proceedings, or by written agreement of the **Insureds**, the claimant and the **Underwriter**.

(2) No individual or entity shall have any right under this Policy to join the **Underwriter** as a party to any **Claim** to determine the liability of any **Insured**;

nor shall the **Underwriter** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

(N) **Insolvency of Insured**:

The **Underwriter** shall not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any of the **Insureds** or any of their estates.

(O) **Notice; Named Insured Authorization**:

(1) Notice to any Insured shall be sent to **Named Insured** at the address designated in ITEM 1 of the Declarations. The **Insureds** agree that the **Named Insured** shall act on their behalf respect to receiving any notices and any return premiums from the **Underwriter**.

(2) Notice to the **Underwriter** shall be sent to the address designated in ITEM 5 of the Declarations.

(P) **Changes**:

Notice to or knowledge possessed by any agent or other person acting on behalf of the Underwriter shall not effect a waiver or change in any part of this Policy or estop the Underwriter from asserting any right under this Policy. This Policy can be altered, waived or changed only by written endorsement issued to form a part of this Policy**.**

(Q) **Assignment**:

No assignment of interest under this Policy shall bind the **Underwriter** without its written consent issued as an endorsement to form a part of this Policy.

(R) **Entire Agreement**:

The **Insureds** agree that this Policy, including the Application, Declarations and any endorsements, constitutes the entire agreement between them and the **Underwriter** or any of the **Underwriter's** agents relating to this insurance.

(S) **Headings**:

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

IV. DEFINITIONS

(A) "**Antitrust Activity**" means any actual or alleged: price fixing; restraint of trade; monopolization; unfair trade practices; or violation of the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any other federal statute involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or of any rules or regulations promulgated under or in connection with any of the foregoing statutes, or of any similar provision of any federal, state or local statute, rule or regulation or common law.

(B) "**Application**" means the application attached to and forming part of this Policy, including any materials submitted and statements made in connection therewith, all of

which are on file with the **Underwriter** and are a part of this Policy, as if physically attached. If the **Application** uses terms or phrases that differ from terms defined in this Policy, no inconsistency between any term or phrase used in the **Application** and any term defined in this Policy will waive or change any of the terms, conditions and limitations of this Policy.

(C) "**Claim**" means any written notice received by any **Insured** that a person or entity intends to hold an **Insured** responsible for a **Wrongful Act** which took place on or after the retroactive date listed in ITEM 7 of the Declarations**.** In clarification and not in limitation of the foregoing, such notice may be in the form of an arbitration, mediation, judicial, declaratory or injunctive proceeding. A **Claim** will be deemed to be made when such written notice is first received by any **Insured**.

(D) "**Claim Services**" means the following services, but only if performed by an **Insured**: the submission, handling, investigation, payment or adjustment of claims for benefits or coverages under health care or workers' compensation plans.

(E) "**Defense Expenses**" means reasonable legal fees and expenses incurred in the investigation, adjustment, defense or appeal of a **Claim**; provided, that **Defense Expenses** shall not include remuneration, salaries, overhead, fees or benefit expenses of any **Insured**.

(F) **"Employment Practices"** means: (1) any action taken with respect to the hiring, promotion, demotion, or termination of employment of any employee or applicant for employment; (2) any sexual advances or harassment of any type; (3) any employment-related misrepresentation, defamation, or invasion of privacy; or (4) any matter involving laws or public policy relating to employment or the application of any employment contract, employee handbook, or personnel manual.

(G) "**Insured**" means any **Insured Entity** and any **Insured Person**.

(H) "**Insured Entity**" means the **Named Insured** and any other entity designated on SCHEDULE A.

(I) **"Insured Person"** means any past, present or future:

(1) employee, director, officer, trustee, member of the board of managers, governor or medical director of, or volunteer, for any **Insured Entity;** and

(2) member of, or provider of administrative support to, any review board or committee of any **Insured Entity**.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** in his or her capacity as such will be deemed to be a **Claim** against such **Insured Person**.

(J) "**Loss**" means **Defense Expenses** and any monetary amount which an **Insured** is legally obligated to pay as a result of a **Claim**. **Loss** shall not include:

(1) fines, penalties. taxes, and punitive, exemplary or multiplied damages; provided that, loss shall include fines, penalties or punitive or exemplary or multiplied damages awarded in **Claims** for **Antitrust Activity** up to the amount listed in ITEM 3 (b) of the Declarations (which amount is part of and not in addition to

the amount listed in ITEM 3 (a) of the Declarations), but only if such fines, penalties or punitive or exemplary or multiplied damages are insurable under applicable law.

(2) fees, amounts, benefits or coverage owed under any contract with any party including providers of health care services, health care plan or trust, insurance or workers' compensation policy or plan or program of self-insurance;

(3) non-monetary relief or redress in any form, including without limitation the cost of complying with any injunctive, declaratory or administrative relief; or

(4) matters which are uninsurable under applicable law.

Determination of the insurability of any **Loss** shall be made under the laws most favorable to the insurability of **Loss** of either: (a) of the jurisdiction of the **Named Insured's** principal place of business, or (b) the jurisdiction where the **Wrongful Act** giving rise to such **Loss** occurred.

(K) "**Managed Care Activity**" means any of the following services or activities: **Provider Selection; Utilization Review**; advertising, marketing, selling, or enrollment for health care or workers' compensation plans; **Claim Services**; establishing health care provider networks; reviewing the quality of **Medical Services** or providing quality assurance; design and/or implementation of financial incentive plans; wellness or health promotion education; development or implementation of clinical guidelines, practice parameters or protocols; triage for payment of **Medical Services**; and services or activities performed in the administration or management of health care or workers' compensation plans.

(L) "**Medical Information Protection**" means maintaining the confidentiality, regardless of the medium of information regarding **Medical Services** and limiting the release or use of such information in conformance with requirements of law.

(M) "**Medical Services"** means health care, medical care, or treatment provided to any individual, including medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing or other professional health care; the use, prescription, furnishing or dispensing of medications, drugs, blood, blood products or medical, surgical, dental or psychiatric supplies, equipment or appliances in connection with such care; the furnishing of food or beverages in connection with such are; counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies.

(N) "**Named Insured**" means the entity designated in ITEM 1 of the Declarations.

(O) "**Policy Period**" means the period from the Inception Date of this Policy stated, in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations, or to any earlier cancellation date of this Policy.

(P) "**Provider Selection**" means any of the following, but only if performed by an **Insured**: evaluating, selecting, credentialing, contracting with or performing peer review of any provider of **Medical Services**.

(Q) "**Related Claims**" means all **Claims** for **Wrongful Acts** based on, arising out of, resulting from, or in any way involving the same or related facts, circumstances,

situations, transactions or events or the same or related series of facts, circumstances situations, transactions or events, whether related logically, causally or in any other way.

(R) "**Sexual Activity**" means any conduct, physical acts, gestures or spoken or written words of a sexual nature, including without limitation sexual intimacy (even if consensual), sexual molestation, sexual assault, sexual battery, sexual abuse, sexual harassment, sexual exploitation or any sexual act.

(S) "**Subsidiary**" means any entity during any time in which the **Named Insured** owns or controls, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such entity's directors or members of the board of managers.

(T) "**Underwriter**" means the insurer identified in the Declarations.

(U) "**Utilization Review**" means the process of evaluating the appropriateness, or necessity of **Medical Services** for purposes of determining whether payment or coverage for such **Medical Services** will be authorized or paid for under any health care plan, but only if performed by an **Insured**. In clarification and not in limitation of the foregoing, **Utilization Review** shall include prospective review of proposed payment or coverage for **Medical Services**, concurrent review of ongoing **Medical Services**, retrospective review of already rendered **Medical Services** or already incurred costs, disease management, and case management.

(V) "**Vicarious Liability**" means liability attributed to any **Insured** for the acts of a person or entity other than an **Insured** via a theory of agency, ostensible agency, apparent agency or respondeat superior.

(W) "**Wrongful Act**" means:

(1) any actual or alleged act, error or omission in the performance of, or any failure to perform, a **Managed Care Activity** by any **Insured Entity** or by any **Insured Person** acting with the scope of his or her duties or capacity as such;

(2) any actual or alleged act, error or omission in the performance of, or any failure to perform, **Medical Information Protection** by an **Insured Entity** or by any **Insured Person** acting within the scope of his or her duties or capacity as such; and

(3) any **Vicarious Liability** for:

(a) the performance of, or any failure to perform:

(i) a **Managed Care Activity**;

(ii) **Medical Information Protection**;

(b) the rendering of, or failure to render, **Medical Services**; provided, that **Wrongful Act** shall not include any **Insured's** actual or alleged direct liability for the rendering of, or failure to render, **Medical Services**; or

(c) any actual or alleged **Sexual Activity**; provided, that **Wrongful Act** shall not include any **Insured's** actual or alleged direct liability for any **Sexual Activity**.

In witness whereof, the Underwriter has caused this Policy to be executed on the Declarations Page.