

VANTAGEPOINT

BENEFIT ADMINISTRATORS

COBRA Application

Effective Date: _____

1. Legal Name of Company Sponsoring Plan: _____

2. Business Entity Type:

- 'C' Corp. 'S' Corp. Limited Liability Company
 Partnership Sole Proprietorship Not-For-Profit
 Government -Entity or church

3. Principal Business Activity: _____

4. Federal Employer Identification Number (must be 9 digits): __ __ -- _ _ _ _ _ _ _ _

5. Contact Person: _____ Title: _____

6. Street Address (No PO Boxes): _____

City, State, Zip: _____

7. Phone Number: _____ Fax Number: _____

8. E-mail: _____

9. Total Number of Employees (incl. P/T, F/T and Unions if applicable): _____

10. Total Number of Benefit Eligible Employees: _____

11. Total Number of Employees Enrolled in the Benefits – Must Complete **COBRA Census Spreadsheet**

Medical: _____ Dental: _____ Vision: _____
HRA: _____ FSA: _____ HSA: _____

11a. Do you want VantagePoint to provide Initial Notices to existing enrolled employees? _____

12. Total Number Currently on COBRA – Must Complete **Columns AR-AQ on COBRA Census Spreadsheet**

Medical: _____ Dental: _____ Vision: _____
HRA: _____ FSA: _____ HSA: _____

13. Total Number of Health Plans (incl. medical, dental, vision, reimbursement programs): _____

****Copies of latest carrier bills must be provided****

14. Legal name(s) of affiliated company(ies) that will be covered under this agreement (provide name(s), tax ID number(s) and full addresses)

a. _____

b. _____

OTHER DETAILS

Would you like VantagePoint to communicate COBRA transactions to your insurance carriers directly? _____ If yes, we will provide an “Administrator of Record” Letter for you to submit to your carriers allowing us to communicate COBRA transactions (COBRA elections and COBRA terminations) on your behalf.

SIGNATURE

Plan Administrator Signature*: _____ Date: _____

*This should be the employer or designee. VantagePoint will provide administrative services but will not be the Plan Administrator.

Name of Broker: _____

Signature: _____

Affiliated Company: _____

Mailing Address: _____

Phone: _____ Fax: _____

E-Mail: _____

The referring company or its representative may earn a fee for services performed in connection with the installation of this plan. If the broker is paying the administrative fees listed above, broker agrees to the same terms and conditions detailed in this application and agreement.

Carrier/Rate Information

Insurance Carrier: _____

Plan Name: _____

Plan Renewal Date: _____ Policy Number: _____

Type of Coverage: Medical Dental Vision HRA FSA HSA

Termination Effective: Date of Termination End of Month **Dependent Coverage:** To 26th Birthday Other: _____

	<u>Monthly Rate (without 2%)</u>
Employee	\$
Employee + Spouse	\$
Employee + Child(ren)	\$
Family	\$

Insurance Carrier: _____

Payment Address: _____

City, State Zip: _____

Plan Renewal Date: _____ Policy Number: _____

Type of Coverage: Medical Dental Vision HRA FSA HSA

Termination Effective: Date of Termination End of Month **Dependent Coverage:** To 26th Birthday Other: _____

	<u>Monthly Rate (without 2%)</u>
Employee	\$
Employee + Spouse	\$
Employee + Child(ren)	\$
Family	\$

Insurance Carrier: _____

Payment Address: _____

City, State Zip: _____

Plan Renewal Date: _____ Policy Number: _____

Type of Coverage: Medical Dental Vision HRA FSA HSA

Termination Effective: Date of Termination End of Month **Dependent Coverage:** To 26th Birthday Other: _____

	<u>Monthly Rate (without 2%)</u>
Employee	\$
Employee + Spouse	\$
Employee + Child(ren)	\$
Family	\$

General Terms and Conditions

- 1. Parties:** This Agreement is between the client identified on the COBRA Administration application (“Client”) and VantagePoint Benefit Administrators and/or its subsidiaries (“VantagePoint”), each of which may be referred to in the singular as “Party” or in the plural as “Parties”.
- 2. Term and Termination:** This Agreement will become effective when signed by Client and accepted by VantagePoint (the “Effective Date”). It will, except as provided in Article 6, continue for an initial term (the “Initial Term”) of one year (unless otherwise stated in an Exhibit or Amendment to this Agreement) beginning with the Effective Date and shall continue thereafter until terminated by either Party upon 90 days prior written notice. Client agrees to pay administrative fees equal to 90 days upon failure to provide 90 days written notice.
- 3. Fees and Payments:** Client will pay the fees set forth in the attached COBRA Administration application, including any applicable taxes. VantagePoint shall not increase fees during the Initial Term of the Agreement. The fees for the services shall increase with forty-five (45) days prior written notice to Client. VantagePoint may charge a late payment fee in the amount of 5% per month for delinquent payments made by Client. Client agrees to pay late payment fees including any costs of collection.
- 4. Services:** Except as provided herein, VantagePoint shall provide the services (“Services”) identified on the COBRA Administration Application. Services provided to Client that are not identified in this Agreement and any exception fees, late fees, or miscellaneous fees will be subject to the terms and conditions of this Agreement and billed at VantagePoint’s then current price.
- 5. Changes:** In the event of a change in federal or state laws or regulations affecting the Services provided under the terms of this Agreement, VantagePoint may make changes to the Agreement, including the Exhibits, with 30 days’ prior written notice to Client. If, upon notification of the change, Client elects not to continue Services, Client may terminate this Agreement upon 30 days’ prior written notice without penalty or cancellation fees.
- 6. Termination for Cause:** If either Party does not meet its obligations as set forth in this Agreement within 30 days after receiving written notice of the breach, then the other Party shall have the immediate right to provide written notice of termination of this Agreement. Client’s obligation to pay all charges that have accrued will survive any termination of this Agreement.
- 7. Confidentiality and Privacy:** Neither Party shall disclose Confidential Information of the other Party. The receiving Party shall use the same degree of care as it uses to protect its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the confidential information of the disclosing Party. The foregoing obligations shall not apply to any information that (a) is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving Party, (b) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving Party, (c) was known to the receiving Party at the time of disclosure, (d) was generated independently by the receiving Party, or (e) is required to be disclosed by law, subpoena or other process. VantagePoint may transfer Client’s Confidential Information to a governmental agency or other third party to the extent necessary for VantagePoint to perform its obligations under this Agreement or if Client has given VantagePoint written authorization to do so. For purposes of this paragraph, Confidential Information shall mean any information identified by either Party as “Confidential” and/or “Proprietary”, or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing Party’s business, employees, service methods, software, documentation, financial information, prices and product plans. VantagePoint reserves the right to independently use its experience and know-how, including processes, ideas, concepts and techniques developed in the course of performing Services under this Agreement. VantagePoint shall appropriately safeguard all Protected Health Care Information (“PHI”) made available to VantagePoint while rendering Services. VantagePoint will comply with all laws applicable to its Services.
- 8. Disposition of Data:** VantagePoint will not be responsible for storing copies of Client’s records when VantagePoint no longer requires such information in order to provide Services to Client. Client will reimburse VantagePoint for the costs of producing any information in VantagePoint’s possession or control relating to Client’s business or employees that VantagePoint is obligated to produce in response to a Client request or court order. Upon termination of this Agreement, VantagePoint will dispose of Client’s records and data unless otherwise previously directed in writing by Client.
- 9. Intellectual Property:** All materials, including but not limited to forms (including data collection forms provided by VantagePoint), brochures, tip sheets, posters, and online content (“Materials”) furnished by VantagePoint to Client are licensed (not sold). Client is granted a personal, non-transferable and nonexclusive license to use Materials solely for Client’s own internal business use. Client does not have the right to copy, distribute, reproduce, alter, display, or use these Materials or any VantagePoint trademarks for any other purpose. Client agrees that (a) it will keep Materials confidential and will use commercially reasonable efforts to prevent and protect the content of Materials from unauthorized use and (b) its license to use Materials ends on the termination date of this Agreement. Upon termination, Client agrees to destroy Materials or, if requested by VantagePoint, return them to VantagePoint.
- 10. Limitation of Remedies:** VantagePoint will indemnify and hold Client harmless from and against any and all claims alleging that the Services and Materials furnished by VantagePoint violate any third party’s patent, trade secret, copyright, or other intellectual property right. VantagePoint will also indemnify and hold Client harmless from and against any and all claims for bodily injury allegedly caused by VantagePoint. Except as expressly set forth in this agreement, the maximum total liability of VantagePoint to client shall be limited to direct money damages in an amount not to exceed the greater of (A) The total amount paid by client for the defective service causing damage during the 12 months immediately preceding the loss, or (b) \$5,000. The remedy is client’s sole and exclusive remedy.

VantagePoint shall not be responsible for any special, incidental, consequential, exemplary, or punitive damages even if VantagePoint has knowledge of the possibility of such potential loss or damage. VantagePoint will not be responsible for failure to provide services if due to any cause or condition beyond the reasonable control of VantagePoint.
- 11. Warranty Disclaimer:** The Express warranties specified in this agreement are in lieu of all other warranties, express or implied, including without limitation, any warranties of merchant ability or fitness for a particular purpose. VantagePoint disclaims and excludes all other warranties.
- 12. Notices:** All notices, requests and communications to the Parties shall be in writing and shall be given to the Parties at their respective address identified on the COBRA Administration Application as either Party may hereafter specify by notice to the other Party. Each such notice, request or communication shall be effective upon receipt, provided that if the day of receipt is not a business day, then the notice shall be deemed to have been received on the next succeeding business day.
- 13. General Provisions:** (a) This Agreement and the Parties rights and obligations shall be governed and construed pursuant to the laws of the state of New York and Client consents to be subject to the jurisdiction of the state or federal courts located in New York; (b) Client may not assign this Agreement except with VantagePoint’s prior written approval; (c) No action under this Agreement may be brought by Client more than two years after the cause of action has accrued.
- 14. Entire Agreement:** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings regarding the subject matter hereof, whether written or verbal. Any amendment to this Agreement must be in writing and signed by authorized representatives of both Parties.

A. DUTIES OF VANTAGEPOINT

Commencing on the effective date of this Agreement, VantagePoint is authorized and instructed by Client to implement and follow the COBRA and HIPAA statutes and the regulations hereunder to provide the following services with respect to the Plan(s) for consideration, as stated in the signed group application.

1. COBRA

VantagePoint shall:

- (a) Advise covered employees and qualified beneficiaries under COBRA or NYS Continuation of Coverage in writing of their rights to elect and continue to receive COBRA continuation coverage under the Plan(s), after Client has notified VantagePoint of the occurrence of one of the events set forth in Section B (1)(a)(i) through (vii), below, with respect to such individual;
- (b) Collect premiums (plus administrative charges) from, or on behalf of continuants, or employees that pay COBRA premiums on behalf of COBRA continuants who elect to continue coverage under the Plan(s), and forward the amount of the paid premiums (excluding the 2% administrative charge paid by continuants and any earnings on the paid premiums retained by VantagePoint) to Client (or as otherwise mutually agreed between the parties) on a monthly basis;
- (c) Advise Client in writing of the status of each continuant electing continued coverage under the Plan(s) within 10 business days after the end of each month. These status reports will include continuants who are current on their payments, and those that failed to remit payments pursuant to the requirements of COBRA, or NYS continuation of coverage, as implemented in accordance with this Agreement;
- (d) Provide Client with excel spreadsheet to be used to notify VantagePoint of a "qualifying event," as that term is defined under COBRA or NYS.
- (e) Provide notification containing the information required to be included in the COBRA initial notification (ERISA Section 606(A)(1)) to all new employees of Client and dependents who are participants under the Plan(s) and whose names and addresses are furnished by Client;
- (f) With respect to services provided by VantagePoint under this Agreement, VantagePoint shall maintain proof of services performed by VantagePoint for a period of seven years.
- (g) VantagePoint will notify client of COBRA qualified beneficiary's acceptance of COBRA within five (5) business days.
 - (i) Client is responsible to perform reinstatement transactions with the insurance carrier upon this notification. VantagePoint will not perform any transactions with the insurance carriers.

VantagePoint shall consider COBRA, or NYS continuation of coverage premiums to be timely paid if, within 30 days of the due date, such premiums are actually delivered to VantagePoint, postmarked by the U.S. Postal Service or sent by express delivery service (with evidence thereof), unless Client advises VantagePoint in writing that a longer period applies under the Plan(s). Actual delivery, postmark or evidence of express delivery will also be used to determine timeliness of COBRA elections based on applicable statutory periods. VantagePoint shall not be responsible for reviewing the Plan(s) in any respect or for comparing the Plan(s) with the group health plan sponsored by another employer or Medicare.

2. HIPAA

- (a) Effective December 31, 2014 VantagePoint will no longer issue Certificates of Creditable Coverage as specified in the Affordability Care Act.

3. PREMIUM BILLING, COLLECTING AND RECONCILIATION

- (a) Provide consolidated monthly invoices to Client based on information provided to VantagePoint by carrier and/or client
- (b) Upon acknowledgement of receipt of said invoices, Client will transfer to the respective carrier premiums to a designated VantagePoint bank account.
- (c) VantagePoint will transmit said premium to respective insurance carrier within five (5) business days of receipt.
- (d) Upon receipt of all eligibility changes from Client; VantagePoint will perform monthly billing reconciliation.

4. GENERAL

VantagePoint shall provide a telephone number for access to a Customer Service Representative, who will be available during normal VantagePoint business hours (9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, except VantagePoint holidays) that may be used by Plan(s) participants and dependents (or their authorized representatives) in connection with the services provided by VantagePoint under this Agreement.

With respect to VantagePoint's HIPAA and COBRA responsibilities above in addressing correspondence to qualified beneficiaries and other individuals, VantagePoint is instructed, where practicable, to use zip+4, (through United States Postal Service approved Accumail or other computer program) for those addresses that are furnished to VantagePoint without such information, and to use its best efforts to correct or complete addresses that it recognizes to be incorrect or incomplete.

B. DUTIES OF CLIENT

1. COBRA

Client shall advise VantagePoint of any of the following events, but in the case of (a)(i) through (vii) below only those events that would result in the loss of coverage by a participant under Client's Plan(s):

- (a) (i) Death of a covered employee/retiree; (ii) Termination of employment of a covered employee (for reasons other than gross misconduct) or reduction in the employee's hours; (iii) Divorce/legal separation from the covered employee; (iv) Covered employee/retiree becoming entitled to benefits under Title XVIII of the Social Security Act (Medicare); (v) Dependent children who cease to be eligible as "dependents" under the terms of the Plan(s); (vi) Client filing for bankruptcy (provided that if Client files for bankruptcy under title 11, U.S.C., Client shall advise VantagePoint of any loss or substantial elimination of coverage under the Plan(s) (with respect to employees, dependents, retirees, surviving spouses and their dependents) occurring within one year before or after the commencement of the bankruptcy proceeding); and (vii) Any other event resulting in a covered employee and/or dependent becoming qualified to continue coverage under the provisions of COBRA;
- (b) A qualified beneficiary being determined, under Title II or XVI of the Social Security Act, to have been disabled at any time during the first 60 days of continuation coverage or that the qualified beneficiary is no longer disabled. Such notice(s) shall be provided to VantagePoint as soon as practicable, but in no event later than 5 business days after the date Client becomes aware of such event; and
- (c) The termination or change of any of the Employer Sponsored Plan(s). Such notice(s) must be provided to VantagePoint in writing at least 30 days prior to the termination or change of said Plan(s). If notification of said change is not received within 5 business days of the effective date, a late notification penalty of \$195 applies.
- (d) The enrollment of any employee onto any of the client's applicable insurance plans no later than five (5) business days (via forms provided by VantagePoint.) prior to the effective date. Failure to provide this eligibility data will result in a late notification penalty of \$25 per incident.
- (e) Client is responsible to notify insurance carrier directly of any employee enrollments, changes and terminations. Client is responsible to notify VantagePoint of any of the above occurrences within 14 calendar days of the occurrence (via spreadsheet provided by VantagePoint.)
- (f) The renewal of any of the Employer Sponsored Plan(s). Renewal plan information must be provided no later than 5 business days prior to the renewal date. Failure to provide this data prior to the renewal date will result in a late notification penalty of \$195 payable to VantagePoint.

The notices described in Section B (1)(a)(i) through (vii), above, are to be sent in writing to VantagePoint on forms provided by VantagePoint or in such other form as is agreed to in writing between the parties within 14 days of the date of the occurrence of the event described therein (irrespective of the date of loss of coverage under the Plan(s)). Client shall be solely responsible for determining whether or not an employee has had a qualifying event, has been terminated for gross misconduct or is or has been incompetent.

Client shall be solely responsible for selecting a determination period, and establishing and advising VantagePoint of the applicable premium rates to be charged for COBRA continuation coverage. Client shall notify VantagePoint in writing: (i) at least 30 days in advance of the applicable billing date of any changes in premium rates affecting participants electing continued coverage under the Plan(s), and (ii) at least 30 days in advance of the applicable billing date of any changes in premiums applicable to participants during an open enrollment period.

2. GENERAL

Client represents that the Plan(s) will be maintained during the term of this Agreement in accordance with HIPAA, COBRA, ERISA, the Internal Revenue Code of 1986, as amended (the "Code") and other applicable law. Client, the Plan(s)' administrator and/or the Plan(s) (and their agents or assigns), and not VantagePoint, shall be solely responsible for the review and payment of claims for benefits under the Plan(s) and all appeals under ERISA, including, without limitation, with respect to claims, benefits and eligibility determinations under the Plan(s).

3. PREMIUM BILLING AND COLLECTION

- (a) Client will provide VantagePoint with eligibility updated within five (5) days of said transaction
- (b) Upon receipt of VantagePoint generated insurance premium invoices, Client will remit payment to a VantagePoint designated bank account within five (5) business days.
- (c) Client will notify VantagePoint of any premium rate changes made by the respective insurance carrier within five (5) business days of such changes.

C. CLAIMS

Notwithstanding anything in this Agreement to the contrary, VantagePoint shall not be responsible to receive or review claims for benefits under the Plan(s) or be liable for the payment of any claims for benefits under or in connection with the Plan(s) or any group health plan, including, without limitation, where sought as damages in an action against Client, VantagePoint or otherwise. Client agrees to hold VantagePoint harmless (including reasonable attorneys fees and costs) and expressly releases all claims against VantagePoint in connection with any claim or cause of action, which results from the failure or alleged failure of Client (its officers and employees, and any entity related to or performing services on behalf of Client, including, without limitation, any insurance company providing services to or on behalf of the Plan(s)) to comply with HIPAA, COBRA, ERISA, other applicable law or the provisions of this Agreement, and any occurrences prior to the effective date of this Agreement.

D. AUDIT RIGHTS

Client may during the term of this Agreement and for a period of two (2) years thereafter inspect any COBRA compliance transactions, procedures, records and files relating to Client's employees (and their dependents), at VantagePoint's office and at a time reasonably acceptable to VantagePoint, upon providing 30 business days advance written notice to VantagePoint.

E. RELATIONSHIP OF PARTIES

Client and VantagePoint acknowledge and agree that VantagePoint is retained under this Agreement as a representative of Client, the Plan(s) and/or the plan administrator of the Plan(s) to assist them with their obligations to comply with the provisions of continuation coverage provisions of COBRA, and that VantagePoint is not a fiduciary under ERISA and lacks any discretion hereunder. The parties hereto further acknowledge that VantagePoint is an independent contractor and not a joint venturer with or partner, agent or employee of Client. Nothing contained in this Agreement shall be deemed to permit either party to conduct business in the name of or on account of the other party, to incur or assume any expense, debt, obligation, liability, tax or responsibility on behalf of or in the name of the other party, or to act on behalf of or bind the other party in any manner whatsoever, except for the taking of actions by VantagePoint on behalf of Client in the course of fulfilling its duties under this Agreement. The parties agree that Client shall for all purposes be considered under HIPAA as the entity that issued the Certificates, and notifications that are distributed by VantagePoint pursuant to this Agreement.

F. RELIANCE BY VANTAGEPOINT

Client has authorized and instructed VantagePoint in Section A to implement its standard administrative procedures to provide services in accordance with this Agreement. VantagePoint shall be fully protected in relying upon representations by Client set forth in this Agreement. VantagePoint shall also be fully protected and indemnified and held harmless by Client in relying on the accuracy of any information provided by Client, either orally, in writing or otherwise, in effecting its actions and obligations under this Agreement. Client and VantagePoint agree that if Client provides VantagePoint with specific written instructions (in a form acceptable to VantagePoint, within its sole discretion) to provide services in a manner other than in accordance with VantagePoint's standard procedures, VantagePoint may (but need not) comply with Client's written instructions, provided that, if VantagePoint complies with such instructions, Client and not VantagePoint shall be solely responsible for VantagePoint's actions so taken, and Client agrees to hold VantagePoint harmless (including reasonable attorneys fees and costs) and expressly releases all claims against VantagePoint in connection with any claim or cause of action, which results from or in connection with VantagePoint's following Client's written instructions. Client represents that the signatory to this Agreement is authorized to enter into such Agreement on behalf of Client. Client (and its agents or assigns), and not VantagePoint, shall be responsible for the administration of the Plan(s) and all appeals under COBRA, ERISA, HIPAA and other applicable law, including, without limitation, with respect to claims, benefits and eligibility determinations under the Plan(s), COBRA, ERISA, and/or HIPAA.

G. ELECTRONIC DATA FILE TRANSFERS

The provisions of this Section shall apply to any electronic data file transfers between Client and VantagePoint.

- (a) Each party shall properly use those security procedures, if any, which are reasonably sufficient to ensure that all transmissions of documents are authorized and to protect its business records and data from improper access.
- (b) VantagePoint shall not be required to confirm or verify the accuracy, authenticity or completeness of any information provided by Client. VantagePoint's only obligation shall be to compile such information accurately and to utilize such information in performing its responsibilities.
- (c) Client is responsible for verifying the receipt of data by VantagePoint from monthly reports sent to Client.
- (d) Documents shall not be deemed to have been properly received, and no document shall give rise to any obligation, until accessible to the receiving party. Any document properly transmitted pursuant to this Agreement shall be considered to be a "writing" or "in writing," and any such document when containing, or to which there is affixed, a signature shall be deemed for all purposes (i) to have been "signed," and (ii) to constitute an "original" when printed from electronic fields or records established and maintained in the normal course of business.
- (e) VantagePoint shall not be liable for and Client shall indemnify VantagePoint with respect to any damages (including reasonable attorney fees and court costs) that may result from its utilization of inaccurate or incomplete information received from Client.
- (f) Email can be used to supplement or replace telephone calls to VantagePoint. During email use, VantagePoint is not responsible for any message or data that is lost or altered in transit, misinterpreted upon receipt, or electronically directed to the wrong employee at VantagePoint. Email is not an acceptable method of transmitting COBRA or HIPAA data.
- (g) The following methods are acceptable methods of transmitting COBRA or HIPAA messages or data: EFT, CD, 3 1/2" diskettes (in tape specifications as agreed by both parties); and manual paper forms (provided by VantagePoint.)

H. RESPONSIBILITY OF PARTIES

Except as expressly provided to the contrary herein, neither VantagePoint nor Client shall be responsible for any damages to the other under the terms of the Agreement or arising out of their respective responsibilities hereunder, unless such damages directly result from: (i) the failure of one of the parties to fulfill any of its duties under this Agreement, or (ii) the dishonest, fraudulent, or criminal acts of a party, its employees, directors, or officers, acting alone or in collusion with others.

In reference to COBRA services under this Agreement, VantagePoint and Client each agree to protect, defend and indemnify the other from and against any Charges (as defined below) arising out of or resulting from the breach by the other party of any provision of this Agreement, such amounts payable upon a Determination of Liability (as defined below) in accordance with the terms set forth below. For purposes of this Section:

- (a) The parties acknowledge and agree that this Agreement is a legally enforceable written agreement within the meaning of Section 4980B(e)(2)(A) with respect to and to the extent of the services that VantagePoint is obligated to provide hereunder. VantagePoint shall pay for excise taxes imposed upon it under Section 4980B(e)(1)(B) of the Code based on the Agreement, subject to the aggregate limits under Section 4980B(c)(4)(C) of the Code, provided that VantagePoint retains all rights to challenge or seek a waiver from the Internal Revenue Service with respect to all or any portion of such excise taxes, and provided further that Client, and not VantagePoint, shall have responsibility with respect to such excise taxes in cases where such tax assessments arises out of Client's act or failure to act or VantagePoint following the instructions provided by Client.
- (b) "Charges" means (i) excise taxes imposed under Code Section 4980B(e)(1), subject to the provisions of the aggregate limitations set forth in Code Section 4980B(c)(4)(C) and the right of the assessed party to challenge the Internal Revenue Service with respect to all or part of the imposition of such excise taxes; and/or (ii) penalties (in an amount up to \$110 per day) that are imposed by a court under Section 502(c)(1) of ERISA and that are paid, but shall exclude the payment of the claims for medical benefits under the terms of any group health plan, and, which in the case of (i) or (ii) are incurred as a direct result of the other party breaching the Agreement;
- (c) "Determination of Liability" means: (i) the agreement by the indemnifying party ("Indemnitor") that it has committed a breach of the Agreement that directly resulted in the incurrence of a Charge by the party seeking indemnification ("Indemnitee") in response to a notice from the Indemnitee to the Indemnitor via certified mail asserting liability under this provision, and requesting payment; or (ii) a determination by a court of competent jurisdiction in a final nonappealable decision issued in a case in which the Indemnitor is a party, which decision finds that the Indemnitor has committed a breach of the Agreement that directly resulted in the Indemnitee incurring a Charge; and
- (d) Notwithstanding anything in this Section to the contrary, neither party shall be entitled to indemnification under this Section in circumstances where the Charge(s) sought hereunder result from: (i) the Indemnitor following the written instruction of the Indemnitee; (ii) reasonable reliance by the Indemnitor on information furnished by the Indemnitee; (iii) the actions or inactions of the Indemnitor in circumstances where the Indemnitor requested, but did not receive, information or guidance from the Indemnitee, which information or guidance the Indemnitee is obligated to provide under the Agreement or which is within the sole control of the Indemnitee under the applicable group health plan; (iv) the improper, illegal, fraudulent or negligent actions of the Indemnitee; or (v) a matter in which the Indemnitee fails to notify the Indemnitor within fifteen days after the Indemnitee first becomes aware of the assessment or failure to act or VantagePoint following the instructions provided by Client.

I. MONIES RECEIVED ARE GENERAL ASSETS

Notwithstanding any provision in this Agreement to the contrary, Client and VantagePoint intend and agree that the monies received by VantagePoint and forwarded to Client as provided in this Agreement: (i) are and shall remain the general assets of Client; (ii) are not the general assets of VantagePoint; and (iii) are not "plan assets" within the meaning of ERISA.