

FILED
01-05-2021
CIRCUIT COURT
DANE COUNTY, WI
2020CV001054

ASSUMPTION AGREEMENT

This Assumption Agreement ("Agreement") is made as of ~~10/28~~ 2020, by and between Time Insurance Company, a Wisconsin domestic insurance company ("TIC"), and Loyal American Life Insurance Company, an Ohio domestic insurance company ("LALIC"). TIC and LALIC are each hereinafter referred to as a "Party" and collectively as the "Parties".

WHEREAS, in 1998, TIC and United Teacher Associates Insurance Company ("UTAIC") entered into a series of agreements regarding TIC's Medicare Supplement health insurance business (the "Business"), by which UTAIC agreed to fully reinsure on a 100% coinsurance basis and to administer the Business (collectively, the "Coinsurance Agreement");

WHEREAS, on or about August 31, 2012, UTAIC entered into an agreement with Loyal American Life Insurance Co. ("LALIC"), a subsidiary of Cigna Corporation ("Cigna"), by which LALIC agreed to fully reinsure and administer the Business (the "Reinsurance Agreement");

WHEREAS, in December 2015, American Financial Group, Inc. the parent of UTAIC, sold UTAIC's stock to HC2 Holdings, Inc.;

WHEREAS, effective December 31, 2016, UTAIC merged into Continental General Insurance Company ("CGIC"), an affiliate of UTAIC, and all of UTAIC's policyholders/members became CGIC policyholders/members on the effective date;

WHEREAS, on or about December 23, 2020, CGIC assigned its interests in the Business to LALIC;

WHEREAS, on May 18, 2020, the Commissioner of Insurance of Wisconsin, the domiciliary state of TIC, filed a Petition for Order for Rehabilitation of TIC ("Petition"), with the consent of TIC, requesting such order be entered by the Dane County Circuit Court with respect to TIC.

WHEREAS, the Order for Rehabilitation was entered on July 29, 2020;

WHEREAS, to the fullest extent possible, TIC desires to assign, transfer and convey to LALIC all of TIC's rights, title, interests and obligations with respect to the Business, as of the Assumption Date and as set forth in this Agreement;

WHEREAS, in the interest of protecting the policyholders currently covered by policies included in the Business to the fullest extent possible, each of the Parties desires that all of TIC's rights, title, interests and obligations with respect to the Business be assumed by LALIC, as of the Assumption Date and as set forth in this Agreement; and

WHEREAS, it is the intent of the Parties to transfer all rights and liabilities under the Coinsurance Agreement from TIC to LALIC, leaving LALIC (and its affiliates) with all of the benefits and all of the burdens associated with those agreements and relieving TIC of all of its obligations with respect to the Business.

NOW, THEREFORE, in consideration of the mutual promises contained herein, each of the Parties hereby agrees as follows:

1. Definitions

1.1 Assumed Liabilities. As used in this Agreement, "Assumed Liabilities" shall include New Claims, Existing Claims and other liabilities with respect to the Business as more fully set forth in Section 2.2, below.

1.2 Assumption Date. As used in this Agreement, the "Assumption Date" shall be the date set forth in an order issued by the Dane County Circuit Court in the State of Wisconsin on which LALIC must assume the Business in accordance with this Agreement. Notwithstanding the foregoing, in the event an applicable state regulatory body in any state in which the Business is in force requires approval of the assumption set forth herein, then the Assumption Date with respect to such state shall be the first quarter-end date (March 31, June 30, September 30, or December 31) after the date on which LALIC has obtained the required approval from such state regulatory body. It is the expectation of the Parties that within eighteen (18) months following the date of this Agreement, as set forth above, the Business in its entirety will have been assumed by LALIC as set forth in Section 2 below.

1.3 Business. As used in this Agreement, the "Business" shall mean the Medicare Supplement health insurance business subject to the Coinsurance Agreement, as indicated in the recitals above.

1.4 Extra Contractual Damages. As used in this Agreement, "Extra Contractual Damages" means all liabilities and obligations relating to policies and certificates included in the Business, but not arising under the express terms and conditions of such policies and certificates, whether to Policyholders, Governmental Authorities or any other person, including any liability for fines, penalties, forfeitures, punitive, special, exemplary or other form of extra-contractual damages, including all legal fees and expenses relating thereto, which liabilities or obligations arise from any act, error or omission, whether or not intentional, negligent, in bad faith or otherwise, relating to: (i) the design, marketing, sale, underwriting, production, issuance, rating, cancellation or administration of the Business; (ii) the investigation, defense, trial, settlement or handling of claims, benefits, or payments under the Business; or (iii) the failure to pay, the delay in payment, or errors in calculating or administering the payment of benefits or claims under or in connection with the Business.

1.5 Governmental Authority. As used in this Agreement, "Governmental Authority" means any federal, state or local domestic or foreign governmental, regulatory or self-regulatory authority, agency, court, tribunal, commission or other governmental, regulatory or self-regulatory entity.

1.6 Coinsurance Agreement. As used in this Agreement, "Coinsurance Agreement" shall have the meaning ascribed to it in the recitals above.

1.7 Law. As used in this Agreement, "Law" means any domestic or foreign federal, state or local statute, law, ordinance or code, or any rules, regulations, administrative interpretation or orders issued by any Governmental Authority pursuant to any of the foregoing, and any order, writ, injunction, directive, judgment or decree of a court of competent jurisdiction applicable to the parties hereto.

1.8 Policyholder. As used in this Agreement, "Policyholder" means, with respect to each policy included in the Business, the named primary insured.

1.9 Reinsurance Agreement. As used in this Agreement, "Reinsurance Agreement" shall have the meaning ascribed to in the recitals above.

2. Assumption and Transfer

2.1 Business Assumed. Subject to the terms and conditions of this Agreement, TIC shall, as of the Effective Date, transfer, convey and absolutely assign to LALIC all of its rights and obligations in and to the Business, and LALIC shall be substituted in TIC's place with respect to all of the Business as if it had originally issued the Business. LALIC shall, with respect to the Assumed Liabilities, perform all contractual promises made by TIC and shall be entitled to all rights of TIC, under the policies and certificates that constitute the Business.

2.2 LALIC Obligations Regarding the Business Assumed.

2.2.1. LALIC's rights and obligations governed by this section regarding the Business assumed include, but are not necessarily limited to the following:

- a. *New Claims*. LALIC hereby assumes TIC's contractual obligation to pay claims incurred with respect to the Business on or after the Assumption Date. TIC specifically transfers to LALIC the right to impose any defense, claim, set-off, recoupment or the like which would have been available to TIC against any claims, taxes, fees or other obligations under the Business, and LALIC shall have the right to do so without further documentation.
- b. *Existing Claims*. LALIC shall assume the contractual obligation for claims that have been incurred on the Business prior to the Assumption Date, including claims that have been so incurred but not reported as of the Assumption Date.
- c. *Premium*. TIC hereby assigns to LALIC TIC's right to any premiums due for the Business. TIC specifically grants LALIC all necessary authority to collect, receive, give receipt for, endorse, sell, assign, and to institute, maintain and defend any and all actions necessary or desirable arising from its rights and obligations hereunder. LALIC assumes the risk that premium on the Business may be uncollectible.
- d. *Premium Refunds*. LALIC hereby assumes TIC's obligation to refund any premium attributable to periods on and after the Assumption Date on the Business which shall become refundable with respect to the Assumed Liabilities.
- e. *Premium Taxes and Assessments*. LALIC shall pay all premium taxes and assessments levied on premium attributable to periods on and after the Assumption Date, including any tax, fee, charge, expense or other cost charged or assessed by or arising directly or indirectly from any mandate or requirements of a Governmental Authority, taxing body, guaranty fund, public or private risk spreading institution including assigned risk pools or other residual market mechanisms.

- f. *Extra Contractual Damages.* LALIC assumes the obligation to pay all Extra Contractual Damages arising from acts, errors or omissions occurring on or after the Assumption Date.
- g. *Reserves.* LALIC shall establish and maintain proper statutory reserves as required by law on the Assumed Liabilities.
- h. *Commissions and Fees.* LALIC shall be financially responsible for payment of all commissions and service fees payable to producers with respect to premiums attributable to periods on and after the Assumption Date.
- i. *Administration.* LALIC is responsible for administering and servicing the Assumed Liabilities and shall bear all expenses resulting from such administration and service for periods after the Assumption Date.
- j. *Reinsurance.* With regard to Business after the Assumption Date, LALIC shall assume all rights and liabilities with respect to any reinsurance agreements entered into by TIC.
- k. *Subrogation.* LALIC shall have the right of subrogation for payments made by LALIC on claims that are incurred on or after the Assumption Date.
- l. *Taxes and Assessment Accruing Prior to the Assumption Date.* To the extent not already paid by TIC prior to the Assumption Date, LALIC shall reimburse TIC as follows: (i) For premiums collected for periods prior to the Assumption Date that are transferred to LALIC, LALIC shall reimburse TIC for the actual amount of state premium taxes attributable to such premiums; and (ii) for assessments on the Business accrued prior to the Assumption Date, including any fee, charge, expense, tax or other cost charged or assessed by or arising directly or indirectly from any mandate or requirement of a federal, state, local or other governmental or regulatory authority, taxing body, guaranty fund, public or private risk-spreading institution including assigned risk pools or other residual market mechanisms.

2.2.2 General Assumption. The list in paragraphs 2.2.1 (a) through (l) may not be an exhaustive statement of the rights and obligations assumed by LALIC under this Section 2. The intent of this Agreement is that LALIC shall be deemed substituted to all of TIC's rights and obligations with respect to the Assumed Liabilities on or after the Assumption Date, unless expressly stated otherwise in this Agreement.

2.2.3 Securing Approvals. TIC shall be responsible for securing all regulatory or other approvals from applicable Governmental Authorities required for the transactions contemplated by this Agreement. To the extent any such approval is required to be obtained by LALIC as a result of the effect the transactions contemplated by this Agreement will have on its standing in a particular state, or for any other reason, TIC shall be responsible for either notifying LALIC of the need to secure such approval or securing such approval on its own accord. LALIC agrees to cooperate with TIC to secure regulatory approvals and LALIC shall have the right to request a copy of the regulatory filing submitted to an applicable Governmental Authority.

2.2.4 **Assumption Certificates.** No later than thirty (30) days after Assumption Date, or within such other timeframe as required by applicable Law, LALIC shall prepare and issue (1) to each policyholder a Certificate of Assumption in substantial conformity with Exhibit A. It is understood that Exhibit A is attached hereto is for illustrative purposes only and that there will be variations of these Exhibits on a state by state basis as approvals are received from the states. LALIC shall send such Certificates of Assumption and other assumption related information to Policyholders and certificate holders by first class mail or as otherwise required by applicable Law, at its own cost and expense.

2.3 **TIC's Obligations Regarding the Business Assumed.**

2.3.1 TIC shall pay all premium taxes and assessments levied on premium attributable to periods prior to the Assumption Date, including any tax, fee, charge, expense, or other cost charged or assessed by or arising directly or indirectly from any mandate or requirements of any Governmental Authority, taxing body, guaranty fund, public or private risk-spreading institution including assigned risk pools or other residual market mechanisms. For the avoidance of doubt, this Section 2.3.1 shall be limited to those taxes, fees, charges, expenses or other charges that are not otherwise payable by the applicable reinsurer pursuant to the Coinsurance Agreement.

2.3.2 As the intent is to transfer all open and unpaid expenses to LALIC as of the Assumption Date, TIC shall transfer to LALIC all of the funds, if applicable, relating to the Business, including:

- a. Advanced premiums and unearned premiums; and
- b. Funds held in claims or premium accounts associated with the Business.

3. Mutual Representations and Warranties

The Parties represent and warrant to each other, the following:

3.1 **Organization and Standing.** It is an insurance company duly organized, validly existing and in good standing under the Laws of its state of domicile and it has all requisite authority necessary to carry on its business as now conducted, to own and operate its assets, properties and business, and to enter into and carry out the terms and conditions of this Agreement.

3.2 **Authorization.** It has properly taken, or will take prior to the Assumption Date, as applicable, all actions required to be taken by it in order to authorize it to enter into and carry out this Agreement, including obtaining any necessary approvals which it is responsible to obtain under the terms of this Agreement. This Agreement has been executed and delivered on its behalf by its duly authorized and acting officer and is a valid obligation, enforceable in accordance with its terms.

3.3 **Compliance.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not:

3.3.1 Result in a breach of the terms or conditions of, or constitute a default under, or violate, as the case may be, its charter, articles or bylaws.

3.3.2 Result in a breach of the terms or conditions of, or constitute a default under, or violate as the case may be, any agreement, option, treaty, license or other document or undertaking, oral or written, to which it is a party or by which it is bound.

3.3.3 Violate any order, rule, regulation, writ, injunction or decree of any court, administrative or government agency.

3.4 Due Diligence. It has satisfactorily conducted all due diligence that it desires in connection with the transactions to be consummated hereunder.

3.5 Complete. The representations and warranties contained in this Section 3 are true, correct and complete to the best of its knowledge and belief.

4. **Indemnification**

4.1 Indemnification of LALIC. TIC hereby agrees to defend and indemnify LALIC and its directors, officers, employees, representatives, affiliates, successors and permitted assigns (collectively, the "LALIC Indemnified Parties") against, and agrees to hold each of them harmless from, any and all actions, claims, losses, liabilities, damages, costs, expenses (including court costs, alternative dispute resolution costs, settlement costs and reasonable attorney's fees), interest and penalties (collectively referred to in this Section 4 as "Loss" or "Losses") incurred or suffered by any LALIC Indemnified Party arising out of (i) any inaccuracy or breach of any representation or warranty made by TIC pursuant to this Agreement, (ii) any breach of this Agreement by TIC, (iii) any act or omission by TIC related to the Business that occurs prior to an Assumption Date, except as otherwise provided in this Agreement, (iv) the violation of any Law by TIC, its officers, and/or its employees, or (v) the gross negligence or intentional or willful misconduct by TIC, its officers, and/or employees.

This Section 4.1 does not extend to any Loss to the extent that it was caused by the acts or omissions of any of the LALIC Indemnified Parties.

4.2 Indemnification of TIC. LALIC hereby agrees to defend and indemnify TIC and its directors, officers, employees, representatives, affiliates, successors and permitted assigns (collectively, the "TIC Indemnified Parties") against, and agrees to hold each of them harmless from, any and all Losses (as defined in Section 4.1 above) incurred or suffered by any TIC Indemnified Party arising out of (i) any inaccuracy or breach of any representation or warranty made by LALIC pursuant to this Agreement, (ii) any breach of this Agreement by LALIC, (iii) Assumed Liabilities, except as otherwise provided in this Agreement, (iv) LALIC's violation of any Law, or (v) LALIC's own gross negligence or intentional or willful misconduct.

This Section 4.2 does not extend to any Loss to the extent that it was caused by the acts or omissions of any of the TIC Indemnified Parties.

4.3 Indemnification Procedures for Third Party Claims

4.3.1 The indemnitee must notify the indemnitor in writing as soon as reasonably practicable, but in no event later than thirty (30) calendar days, after the indemnitee becomes aware of circumstances which may lead to the indemnitee seeking indemnification hereunder, including

a pending or threatened claim or demand asserted by a third party against the indemnitee (a "Third Party Claim"). If such notice is not provided within the time frame required by the previous sentence, the indemnitee shall still be entitled to indemnification by the indemnitor except to the extent that the indemnitor is actually prejudiced by the late receipt of notice (except that the indemnitor shall not be liable for any defense or other expense incurred during the period in which the indemnitee failed to give such notice).

4.3.2 The indemnitee must allow the indemnitor to make any investigations or defense the indemnitor feels is appropriate with respect to Third Party Claims. The indemnitee must cooperate, at the indemnitor's expense, with such investigations and defense, including, without limitation, by furnishing records, information and testimony and attending any conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested in connection therewith. The indemnitee shall have the right to participate (but not control), at its own expense, with the indemnitor in the defense of any Third Party Claim.

4.3.3 No Third Party Claim may be settled or otherwise compromised without the consent of both the indemnitor and the indemnitee, which consent shall not be unreasonably withheld, delayed or conditioned, if the settlement or compromise by its terms (a) obligates the indemnitor to pay the full amount of the liability in connection with such Third Party Claim, (b) releases the indemnitee of any further liability associated therewith, and (c) does not impose any equitable remedy or penalty upon the indemnitee or involve any restriction or condition which could reasonably be expected to have an adverse effect on the indemnitee or its affiliates or on any business of the indemnitee or its affiliates.

5. Arbitration

5.1. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between the parties. The disputing party shall give the other party written notice of the dispute. Within twenty (20) days after receipt of such notice, the receiving party shall submit a written response. The parties shall meet thereafter within thirty (30) days of the date of the disputing party's notice and attempt to resolve the matter.

5.2. Any dispute arising out of this Agreement that has not been resolved within sixty (60) days of the disputing party's notice submitted in accordance with Subsection 5.1 above, and that is not otherwise still being negotiated in good faith, may be submitted to the decision of a board of arbitration composed of two arbitrators and an umpire, meeting at a destination chosen by the party not requesting arbitration, unless otherwise agreed.

5.3 The members of the board of arbitration shall be active or retired disinterested officials of health insurance or reinsurance companies. Each party shall appoint its arbitrator and the two arbitrators shall choose an umpire before instituting the hearing. If the respondent fails to appoint its arbitrator within thirty (30) days after being requested to do so by the claimant, the latter shall also appoint the second arbitrator. If the two arbitrators fail to agree upon the appointment of an umpire within four weeks after their nominations, each of them shall name three, of whom the other shall decline two and the decision shall be made by drawing lots.

5.4 The claimant shall submit its initial brief within twenty (20) days from appointment of the umpire. The respondent shall submit its brief within twenty (20) days after receipt of the claimant's brief and the claimant may submit a reply brief within ten (10) days after receipt of the respondent's brief.

5.5 The board shall make its decision with regard to the custom and usage of the insurance and reinsurance business. The board shall issue its decision in writing based upon a hearing in which evidence may be introduced without following strict rules of evidence but in which cross examination and rebuttal shall be allowed. The board shall make its decision within sixty (60) days following the termination of the hearing unless the parties consent to an extension. The majority decision of the board shall be final and binding upon all parties to the proceeding. Judgment may be entered upon the award of the board in any court having jurisdiction thereof.

5.6 Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the umpire. The remaining costs of the arbitration proceedings shall be allocated by the board.

5.7 It is agreed that the arbitrators do not have the jurisdiction to authorize any punitive, exemplary or consequential damage awards between the parties hereto.

6. Records

6.1 Assumed Liabilities. TIC shall direct the transfer to LALIC of any and all active files with respect to the Business including, but not necessarily limited to, applications, authorizations to issue, policies and policy forms, certificates and certificate forms, endorsements, declaration pages, underwriting and administrative files and related correspondence, and any other files or documentation owned by and in the possession or control of TIC the day preceding the Assumption Date, or as soon thereafter as reasonably possible, which are reasonably necessary to assist LALIC in the reinsurance and assumption of the Business. TIC's obligations under this section shall extend to both paper (hard) copy, and any form of magnetic, electronic or film storage of data.

6.2 HIPAA Privacy. Contemporaneously with the execution of this Agreement, the parties shall execute a Business Associate Addendum that shall be attached hereto and incorporated herein by this reference.

7. Offset

Any debts or credits, matured or unmatured, liquidated or unliquidated, in favor of or against, either LALIC or TIC, with respect to this Agreement, may be offset or only the balance may be allowed or paid.

8. Miscellaneous

8.1 Amendments. This Agreement may be amended or modified only by a written amendment signed by both parties which refers to this Agreement.

8.2 Governing Law. This Agreement shall be governed by the Laws of the State of Wisconsin.

8.3 Waiver. The failure to exercise any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or condition herein contained. No term or condition of this Agreement shall be deemed to have been waived unless such waiver shall be in writing and signed by the party charged therewith.

8.4 Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization and the parties shall be returned to the status quo with respect to the Assumed Liabilities affected thereby without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

8.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement.

8.6 Execution. Each of the Parties hereto shall make, do or cause to be done such further acts, and shall execute, acknowledge and deliver such instruments and documents, as the other party may reasonably request or require to effectuate fully the purpose and intent of this Agreement.

8.7 Assignments. This Agreement, and the terms, conditions and covenants contained herein, shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. This Agreement is not assignable by either party without the written consent of the other party.

8.8 Headings. The headings of the provisions contained herein are for convenience only and do not define, limit or construe the contents of such paragraphs.

8.9 Entire Agreement. This Agreement states the entire understanding between the Parties with respect to the transactions contemplated herein and there are no understandings between the Parties other than as expressed in this Agreement.

8.10 Notices. Any notice regarding this Agreement shall be deemed sufficiently given if it is in writing and hand delivered or mailed by certified or registered United States mail, return receipt requested, to the other party at such address as furnished by the other party in writing.

8.11 No Third Party Beneficiaries. This Agreement is solely between LALIC and TIC. It is intended solely for the benefit of the parties hereto and their permitted successors and assigns, and it is not the intention of LALIC or TIC to confer any rights as a third-party beneficiary to this Agreement upon any other person or party.

8.12 Cooperation. The Parties shall assist and cooperate with each other by making all reasonable efforts to obtain approvals from state regulatory bodies as applicable and take such other action as may be reasonably required to carry out effectively the intent of this Agreement.

8.13 Exhibits. All Exhibits are hereby incorporated by reference into this Agreement.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, Time Insurance Company and Loyal American Life Insurance Company have caused this Agreement to be executed by their respective duly authorized officers, on the dates shown below.

**LOYAL AMERICAN LIFE INSURANCE
COMPANY**

By: *Byron H. Roberts*

Its: Treasurer

Date: December 28, 2020

TIME INSURANCE COMPANY

By: *Mark H. Jamal*

Its: Special Deputy Commissioner

Date: Dec 28, 2020

EXHIBIT A
Assumption Certificate

LOYAL AMERICAN LIFE INSURANCE COMPANY
[ADDRESS]
[ADDRESS]

Policyholder:

Policy Number:

Policy Type:

Effective Date of Assumption: [date]

Policy Issue State: [state]

CERTIFICATE OF ASSUMPTION

This will certify that Loyal American Life Insurance Company (“LALIC”) does hereby assume all rights, liabilities and obligations under the Policy of insurance to which this Certificate of Assumption is attached, such Policy heretofore issued by Time Insurance Company. This assumption is effectuated by a court order issued by the Dane County Circuit Court in the State of Wisconsin, which was issued pursuant to the Order for Rehabilitation entered against Time Insurance Company on July 29, 2020.

This means that LALIC is substituted for Time Insurance Company in all matters and documents relating to claims incurred on and after the Effective Date of Assumption, including the rights, liabilities and obligations originally held by Time Insurance Company under the Policy. LALIC will pay all Policy benefits for claims incurred in strict accordance with the terms of the Policy.

Your rights, liabilities and obligations remain in full force and effect. Your rights and obligations run to, and are enforceable against LALIC, and not Time Insurance Company, with respect to claims incurred on and after the Effective Date of Assumption, in strict accordance with the terms of the Policy.

All premiums due for such assumed rights, liabilities and obligations after the Effective Date of Assumption are to be paid to LALIC in accordance with the current method for such payment.

This Certificate of Assumption forms a part of Your Policy. Please keep it with the Policy documents.

IN WITNESS WHEREOF, this instrument has been signed on behalf of Loyal American Life Insurance Company.

[insert signature]

NAME
TITLE

EXHIBIT B
Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is entered into as of 12/28/20 (the "Effective Date"), by and between Loyal American Life Insurance Company, a Texas corporation, with offices located at _____ (the "Covered Entity") its parent company, affiliates, related entities, and subsidiaries, and Time Insurance Company (the "Business Associate"). Covered Entity and Business Associate are at times referred to herein individually as "Party" and collectively as "Parties."

WHEREAS, Covered Entity and Business Associate have an existing relationship under which Covered Entity will make available and/or transfer to Business Associate certain Protected Health Information (defined below), in conjunction with the performance of a function or activity that is being provided by Business Associate to Covered Entity, which is confidential and must be afforded special treatment and protection under the Privacy Rule (defined below) and the Security Rule (defined below), including the amendments to such rules contained in the HITECH Act (defined below).

WHEREAS, Business Associate will create, store, access, receive, maintain, and/or transmit certain Protected Health Information, on behalf of Covered Entity, that can be used or disclosed only in accordance with this Agreement, the Privacy Rule and the Security Rule.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Covered Entity and Business Associate agree as follows:

1. Definitions. Terms used, but not otherwise defined, in this Agreement have the same meaning as those ascribed to the terms in the Health Insurance Portability and Accountability Act of 1996 (as amended by the Health Information Technology for Economic and Clinical Health Act, Subtitle D of Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act")), and the regulations promulgated thereunder as set forth in the Code of Federal Regulations ("C.F.R.") at Title 45, Part 160, Part 162 and Part 164, and other applicable laws (collectively, "HIPAA"). In addition, the following terms shall have the following meanings:

1.1 "Breach" means the unauthorized acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the Privacy Rule which compromises the security or privacy of the Protected Health Information, as described in 45 C.F.R. 164.402.

1.2 "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the entity identified as "Business Associate" above and its affiliates.

1.3 "Covered Entity" shall generally have the same meaning as the term "covered entity" as 45 CFR 160.103, and in reference to the party to this agreement shall mean National Health Insurance Company.

1.4 "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

1.5 "Electronic Protected Health Information" shall mean individually identifiable health information that is transmitted or maintained by electronic media as described in HIPAA.

- 1.6 "HHS" shall mean the U.S. Department of Health and Human Services.
- 1.7 "Individual" shall mean the person who is the subject of the Protected Health Information, and has the same meaning as the term "individual" is defined in HIPAA, and shall include a personal representative in accordance with 45 C.F.R. 164.502(g).
- 1.8 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, C.F.R. at Title 45, Parts 160 and 164.
- 1.9 "Protected Health Information" shall have the same meaning as the term "protected health information" as described in HIPAA, limited to the information created or received by Business Associate from, or on behalf of, Covered Entity.
- 1.10 "Required By Law" shall have the same meaning as the term "required by law" in HIPAA.
- 1.11 "Secretary" shall mean the Secretary of HHS or his or her designee.
- 1.12 "Security Incident" shall have the same meaning as the term "Security incident" as defined in 45 C.F.R. 164.304.
- 1.13 "Security Rule" shall mean the Standards for the Security of Electronic Protected Health Information, C.F.R. at Title 45, Parts 160, 162 and 164.
- 1.14 "Unsecured Protected Health Information" has the same meaning as the term "Unsecured protected health information" as defined in Section 13402 of the HITECH Act and 45 C.F.R. 164.402.
2. Permitted Uses and Disclosures by Business Associate.
- 2.1 General Uses and Disclosures. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity (the "Services"), if such use or disclosure by Business Associate complies with the Privacy Rule's minimum necessary policies and procedures required of Covered Entity (and/or Business Associate), and if such use or disclosure of Protected Health Information would not violate the Privacy Rule or the Security Rule if done by Covered Entity (and/or Business Associate).
- 2.2 Limits On Uses And Disclosures. Business Associate hereby agrees that it shall be prohibited from using or disclosing Protected Health Information that it creates, stores, accesses, receives, maintains, or transmits on behalf of Covered Entity for any purpose other than as expressly permitted or required (i) to perform the Services, (ii) by this Agreement or (iii) as Required by Law.
- 2.3 Disclosure For Management, Administration and Legal Responsibilities. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that:
- i. The disclosure is Required by Law; or
 - ii. Business Associate obtains reasonable assurances from the person or entity to whom the Protected Health Information is disclosed that: (i) the Protected Health Information will remain confidential and be used or further disclosed only as Required by

Law or for the specific purpose for which it was disclosed to the person, and (ii) they will notify Business Associate within thirty (30) days of the date of any Breach with respect to Unsecured Protected Health Information (or any other Security Incident or Breach with respect to Protected Health Information) received from Business Associate.

2.4 Data Aggregation Services. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide "Data Aggregation Services" (as defined by 45 C.F.R. 164.501) relating to the operations of the Covered Entity as permitted by 42 C.F.R. 164.504(e)(2)(i)(B).

3. Prohibited Uses and Disclosures. Business Associate shall not:

3.1 Make or cause to be made any marketing communication about a product or service that is prohibited by Section 13406(a) of the HITECH Act;

3.2 Make or cause to be made any written fundraising communication that is prohibited by Section 13406(b) of the HITECH Act;

3.3 Disclose Protected Health Information to a health plan for payment or health care operations (as defined under the Privacy Rule) purposes if Covered Entity has advised Business Associate (or the Individual has notified Business Associate directly) that the Individual, or someone other than the health plan on behalf of the Individual, has (i) requested this special restriction, and (ii) paid out-of-pocket in full for the health care item or service to which the Protected Health Information solely relates, in accordance with Section 13405(a) of the HITECH Act; or

3.4 Directly or indirectly receive remuneration in exchange for Protected Health Information created, stored, accessed, received, maintained, or transmitted in connection with Business Associate's relationship with Covered Entity in accordance with Section 13405(d) of the HITECH Act, except as otherwise permitted by the HITECH Act; provided, however, that this prohibition shall not affect payment by Covered Entity to Business Associate.

4. Business Associate Obligations.

4.1 Appropriate Safeguards. Business Associate will establish and maintain reasonable and appropriate administrative, physical and technical safeguards to:

i. Prevent the use or disclosure of the Protected Health Information, other than as such use or disclosure is permitted by this Agreement or to perform the Services; and

ii. Protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, stores, accesses, receives, maintains, or transmits on behalf of Covered Entity.

4.2 Security Rule. Business Associate shall comply with the applicable policies and procedures and documentation requirements of the Security Rule set forth in 45 C.F.R. 164.308, 45 C.F.R 164.310, 45 C.F.R 164.312 and 45 C.F.R 164.316 as required by Section 13401(a) of the HITECH Act.

4.3 Reports of Improper Use, Disclosure or Security Incidents. Business Associate hereby agrees that it shall report to Covered Entity, in a reasonable time and manner, any:

- i. Use or disclosure of Protected Health Information not provided for or allowed by this Agreement; and
- ii. Security Incidents that Business Associate becomes aware of that involve the Electronic Protected Health Information covered under this Agreement. Notwithstanding the foregoing, this Section 4.3(ii) shall not apply to unsuccessful Security Incidents.

4.4 Subcontractors and Agents. Business Associate will:

- i. Ensure that any agents and subcontractors to whom Business Associate provides Protected Health Information that Business Associate has created, stored, accessed, received, maintained, or transmitted on behalf of Covered Entity, agree to the same restrictions and conditions that apply to Business Associate in this Agreement; and
- ii. Notify Covered Entity in writing of any such agents and subcontractors to whom Business Associate discloses or otherwise provides such Protected Health Information.

4.5 Right of Access to Protected Health Information. Except as otherwise limited in this Agreement, Business Associate hereby agrees to provide, in a reasonable time and manner, access to Protected Health Information in a Designated Record Set (if applicable and as defined in HIPAA) to Covered Entity or, as directed by Covered Entity, to an Individual or Individual's designee in order to meet the requirements under 45 C.F.R. 164.524, at the written request of Covered Entity. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill Covered Entity's obligations under the HITECH Act.

4.6 Amendments to Protected Health Information. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set, if applicable, that Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526, at the request of Covered Entity or an Individual, and in a reasonable time and manner. If any Individual requests an amendment of Protected Health Information directly from Business Associate (or Business Associate's subcontractors or agents), Business Associate will notify Covered Entity immediately following the request. Any approval or denial of amendment of Protected Health Information maintained by Business Associate (or Business Associate's subcontractors or agents) shall be the responsibility of Covered Entity.

4.7 Access to Books and Records. Except as otherwise limited in this Agreement, Business Associate agrees to make its internal policies, procedures, practices, books and records relating to the use, disclosure and safeguarding of Protected Health Information created, stored, accessed, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, available to the Secretary or Covered Entity, in a reasonable time and manner, for purposes of the Secretary's determining Covered Entity's compliance with the Privacy Rule and the Security Rule.

4.8 Documentation of Disclosures. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

4.9 Provide Accounting of Disclosures. Except as otherwise limited in this Agreement, Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with Section 4.8 of this Agreement, to permit Covered

Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528 and, if applicable, Section 13405(c) of the HITECH Act. In the event that the request for an accounting is delivered directly to Business Associate (or Business Associate's subcontractors or agents), Business Associate shall forward a copy of the request to Covered Entity immediately. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested.

4.10 Mitigation Procedures. Business Associate agrees to mitigate, to the extent commercially reasonable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

4.11 Notification of Breach. Except as otherwise provided under the HITECH Act, Business Associate agrees to notify Covered Entity immediately following the date of discovery of a Breach of Unsecured Protected Health Information as follows:

i. A Breach shall be deemed discovered by Business Associate when Business Associate actually knows of the Breach or, by exercising reasonable diligence, would have known of the Breach; and

ii. The notification required by this Section 4.11 shall be made in accordance with Section 14 and shall include, to the extent possible, (i) the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach, (ii) a brief description of what happened, including the date of the Breach and the date of the Business Associate's discovery of the Breach, if known, (iii) a description of the types of Unsecured Protected Health Information involved in the Breach, (iv) any steps affected Individuals should take to protect themselves from potential harm resulting from the Breach, (v) a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against further Breaches, and (vi) contact procedures for affected Individuals, which shall include a toll-free telephone number, an e-mail address, web site, or postal address

5. Covered Entity Obligations.

5.1 Provide Notice. Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. 164.520, as well as any changes to such notice, in a reasonable time and manner, when such copy of the notice or amended notice is required for compliance with the Privacy Rule.

5.2 Obtain Authorization. Covered Entity shall obtain any consent or authorization from Individuals that may be required by applicable federal or state laws and regulations prior to furnishing Business Associate the Protected Health Information.

5.3 Provide Changes of Authorization or Permission. Covered Entity shall provide, in writing and in a reasonable time and manner, Business Associate with any changes in, or revocation of, authorization or permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

5.4 Provide Restrictions. Covered Entity shall notify Business Associate, in writing and in a reasonable time and manner, of any restrictions to the use or disclosure of Protected Health

Information changing Business Associate's obligations that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522.

5.5 Permissible Requests by Covered Entity. Covered Entity shall not request that Business Associate use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule, the Security Rule or this Agreement if done by Covered Entity.

6. Term. The term of this Agreement shall commence as of the Effective Date, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity in compliance with Section 9 of this Agreement.

7. Termination for Cause.

7.1 By Covered Entity. In accordance with Section 13404 of the HITECH Act, if Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, Covered Entity shall provide written notice of such breach to Business Associate and provide an opportunity for Business Associate to cure the breach or end the violation within 30 business days from the date Business Associate receives the written notice from Covered Entity. If Business Associate does not cure the breach or end the violation within the stated cure period, Covered Entity may immediately terminate this Agreement and the underlying services agreement. In addition, Covered Entity may terminate this Agreement immediately without opportunity for cure if Covered Entity and Business Associate agree that cure is not reasonably possible or if Covered Entity deems such immediate termination to be appropriate under the circumstances.

7.2 By Business Associate. In accordance with Section 13404 of the HITECH Act, if Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under this Agreement, Business Associate shall provide written notice of such breach to Covered Entity and provide an opportunity for Covered Entity to cure the breach or end the violation within 30 business days from the date Covered Entity receives the written notice from Business Associate. If Covered Entity does not cure the breach or end the violation within the stated cure period, Business Associate may immediately terminate this Agreement and the underlying services agreement. In addition, Business Associate may terminate this Agreement immediately without opportunity for cure if Business Associate and Covered Entity agree that cure is not reasonably possible or if Business Associate deems such immediate termination to be appropriate under the circumstances.

8. Special Termination. In the event that any federal, state or local law or regulation currently existing or hereinafter enacted, or any final or non-appealable construction or interpretation of such law or regulation (whether federal, state or local) or enforcement of such laws or regulations hereinafter occurs that makes performance of this Agreement impossible or illegal, the Parties mutually agree to enter into a modification of this Agreement to make substantial performance of this Agreement possible. However, should the Parties be unable to agree upon an appropriate modification to comply with such requirements following thirty (30) days of good faith negotiations, either Party may give written notice to immediately terminate this Agreement and, in such event, Business Associate shall discontinue services for Covered Entity.

9. Effect of Termination.

- 9.1 **Return of Protected Health Information.** Except as otherwise limited in this Agreement, and except as provided in Section 9.2 of this Agreement, upon termination of this Agreement for any reason, Business Associate hereby agrees to return all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity or destroy such Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information, except as permitted by Section 9.2 of this Agreement.
- 9.2 **Retention of Protected Health Information.** Except as otherwise limited in this Agreement, in the event that Business Associate determines that returning or destroying the Protected Health Information in accordance with Section 9.1 of this Agreement is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of the Protected Health Information not feasible and shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction not feasible, for as long as Business Associate maintains such Protected Health Information.
10. **Indemnification.** Except as otherwise limited in this Agreement, the parties agree that they shall mutually indemnify and hold harmless each other against any claims, liabilities, damages, and expenses, including reasonable attorneys' fees, incurred in defending or compromising actions brought against them arising out of or related to their or their employees' acts or omissions in connection with their negligent or fraudulent performance of their applicable duties under this Agreement. This indemnity shall be in proportion to the amount of responsibility found attributable to indemnifying party.
11. **Survival of Obligations.** Except as otherwise limited in this Agreement, termination of this Agreement shall not relieve either Party from fulfilling any obligation under this Agreement, including but not limited to, Sections 9 and 10 hereof, or any other agreement between the Parties that, at the time of termination, has already accrued to the other Party or which thereafter may accrue with respect to any act or omission that occurred prior to such termination.
12. **Governing Law; Venue.** This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of Wisconsin, without reference to the conflict of laws principles of any jurisdiction.
13. **Binding Nature and Assignment.** This Agreement shall be binding on the Parties hereto and their successors and assigns, but neither Party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

14. **Notices.**

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered in person, by an overnight express delivery service (e.g., Federal Express) or by registered or certified mail (postage prepaid, return receipt requested) to the other party at the following addresses (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof):

If to Covered Entity:

LALIC Corporation
Address

Address

Attn:

If to Business Associate:

Any notice or other communication pursuant to this Agreement shall be deemed to have been duly given or made and to have become effective upon the earliest of (a) when delivered in hand to the party to which directed, (b) if sent by first-class mail postage prepaid and properly addressed as set forth above, at the time when received by the addressee, and receipt has been confirmed, (c) if sent by overnight express delivery service, the next succeeding day after being sent, provided that receipt has been acknowledged by such service, or (d) with respect to delivery by certified mail, return receipt requested, when delivery thereof, properly addressed as set forth above, is made by the U.S. Postal Service.

15. Cooperation. Both Business Associate and Covered Entity acknowledge that mutual cooperation and assistance is essential to each Party's performance under this Agreement; therefore, it will be the duty of both Parties to make all good faith efforts to fully cooperate in the execution of this Agreement.

16. Headings. The headings of this Agreement are inserted for convenience only and are not to be considered in the interpretation of this Agreement. They shall not in any way limit the scope or modify the substance or context of any sections of this Agreement.

17. Force Majeure. Neither Party shall be liable or be deemed in breach of this Agreement for any failure or delay of performance that results, directly or indirectly, from acts of God, civil or military authority, public disturbance, accidents, fires, or any other cause beyond the reasonable control of either Party, and such nonperformance shall not be grounds for termination.

18. Attorney's Fees. Except as otherwise limited in this Agreement, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Agreement, each Party shall bear their own legal expenses and the other costs incurred in that action or proceeding.

19. Regulatory References. A reference in this Agreement to a section in the Privacy Rule and/or the Security Rule means the section as in effect or as amended, and for which compliance is required.

20. Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.

21. Counterparts. This Agreement may be executed in two or more counterparts, each of which alone and all of which together shall constitute one and the same instrument. The signature of a Party set forth on a counterpart hereof and transmitted by facsimile or other electronic transmission (including by email in portable document format (pdf) to the other parties shall be of the same force and effect as if the executing Party had delivered a counterpart bearing an original signature.

22. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, rule or regulation, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall

not be affected by the illegal, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

23. **Waivers.** The failure of a Party at any time or times to require performance of any provision of this Agreement shall in no manner affect such Party's right at a later time to enforce such provision. No waiver by a Party of any provision or breach of this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver in other any instance.

24. **Relationship.** Business Associate is acting as an independent contractor of Covered Entity with respect to this Agreement. Nothing in this Agreement shall create or be deemed to create the relationship of employer/employee, partners, joint ventures, or principal-agent between the Parties.

25. **Amendment.** Except as otherwise limited in this Agreement, the Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA and the HITECH Act. No changes in or additions to this Agreement shall be recognized unless incorporated herein by written amendment by the Parties, such amendment(s) to become effective on the date stipulated in such amendment(s). No discharge of obligations arising under this Agreement shall be valid unless in writing and executed by the Party against whom such discharge is sought to be enforced.

26. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with the Privacy Rule and the Security Rule.

IN WITNESS WHEREOF, Business Associate and Covered Entity have caused this Agreement to be signed and delivered by their duly authorized representatives, effective as of the Effective Date.

<p>COVERED ENTITY:</p> <p>LOYAL AMERICAN LIFE INSURANCE COMPANY</p> <p>By: <u><i>Byron K Buescher</i></u></p> <p>Print Name: <u>Byron K Buescher</u></p> <p>Title: <u>Treasurer</u></p>	<p>BUSINESS ASSOCIATE:</p> <p>TIME INSURANCE COMPANY</p> <p>By: <u><i>Mark H Fernal</i></u></p> <p>Print Name: <u>MARK H FERNAL</u></p> <p>Title: <u><i>Special Deputy Commissioner</i></u></p> <p><u><i>Dec 28, 2020</i></u></p>
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EXHIBIT C**Consent Agreement**

In 1998, Time Insurance Company ("TIC"), a Wisconsin insurance company, and United Teacher Associates Insurance Company ("UTAIC") entered into a series of agreements regarding TIC's Medicare Supplement health insurance business (the "Business"), by which UTAIC agreed to fully reinsure on a 100% coinsurance basis and to administer the Business.

On or about August 31, 2012, UTAIC entered into an agreement with Loyal American Life Insurance Co. ("LALIC"), an Ohio insurance company and a subsidiary of Cigna Corporation ("Cigna"), by which LALIC agreed to fully reinsure and administer the Business (the "Reinsurance Agreement").

In December 2015, American Financial Group, Inc. the parent of UTAIC, sold UTAIC's stock to HC2 Holdings, Inc.

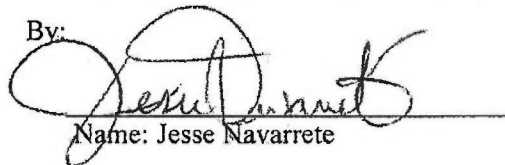
Effective December 31, 2016, UTAIC merged into Continental General Insurance Company ("CGIC"), an affiliate of UTAIC, and all of UTAIC's policyholders/members became CGIC policyholders/members on the effective date.

With full legal authority to do so, CGIC hereby consents to the assumption by LALIC of the Business from TIC, including the assumption by LALIC of all rights and obligations of TIC with respect to the policies and certificates included in the Business. Effective within this consent is the implied understanding that the CGIC coinsurance and reinsurance agreements will be deemed terminated and that CGIC no longer has any obligations with respect to the Business assumed by LALIC.

Date: December 23, 2020

Continental General Insurance Company

By:

A handwritten signature in black ink, appearing to read "Jesse Navarrete", is written over a horizontal line. The signature is stylized and cursive.

Name: Jesse Navarrete

Title: AVP and Controller