FIDUCIARY LIABILITY INSURANCE EDGE® EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY

("FLI Coverage Section")

Notice: Pursuant to Clause 1 of the **General Terms and Conditions**, the **General Terms and Conditions** are incorporated by reference into, made a part of, and are expressly applicable to this **FLI Coverage Section**, unless otherwise explicitly stated to the contrary in this **FLI Coverage Section**.

In consideration of the payment of the premium and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

1. INSURING AGREEMENTS

All coverage granted for **Loss** under this **Coverage Section** is provided solely with respect to: (i) **Claims** first made against an **Insured**; and (ii) **Voluntary Compliance Losses** first ascertained by or assessed against an **Insured**, in each such event, during the **Policy Period** or any applicable **Discovery Period** and reported to the **Insurer** as required by this **Coverage Section**. **Claims** that are fact-finding investigations which do not allege a **Wrongful Act** and **Claims** that are **Internal Appeals** shall each be deemed first made when they are reported. Subject to the foregoing and the other terms, conditions, and limitations of this policy, this **Coverage Section** affords the following coverage:

A. Insured Person Coverage

This policy shall pay the **Loss** of any **Insured Person** that no **Organization** or **Plan** has indemnified or paid, and that arises from any **Claim**:

(1) made against such **Insured Person** for any **Wrongful Act** of such **Insured Person**; or

(2) that is a fact-finding investigation which does not allege in writing a **Wrongful Act** or that is an **Internal Appeal**, if an **Insured** elects to give notice.

B. Indemnification of Insured Person Coverage

This policy shall pay the **Loss** of an **Organization** or **Plan** that arises from any **Claim**:

(1) made against any **Insured Person** for any **Wrongful Act** of such **Insured Person**; or

(2) that is a fact-finding investigation which does not allege in writing a **Wrongful Act** or that is an **Internal Appeal**, if an **Insured** elects to give notice;

but only to the extent that such **Organization** or **Plan** has indemnified such **Loss** of, or paid such **Loss** on behalf of, the **Insured Person**.

C. Organization And Plan Coverage

This policy shall pay the **Loss** of any **Organization** or **Plan** arising from any **Claim**:

(1) made against such **Organization** or **Plan** for any **Wrongful Act** of such **Organization** or **Plan** (or of any employee for whom such **Organization** is legally responsible); or

(2) that is a fact-finding investigation which does not allege in writing a **Wrongful Act** or that is an **Internal Appeal**, if an **Insured** elects to give notice.

D. Voluntary Compliance Loss Coverage

This policy shall pay any **Voluntary Compliance Loss** first ascertained by or assessed against an **Insured**, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section**.

The payment of any **Voluntary Compliance Loss** under this policy shall not waive any of the **Insurer's** rights under this policy or at law, including in the event that circumstances giving rise to such **Voluntary Compliance Loss** result in a **Claim**.

2. EXTENSIONS

A. Settlor Capacity

Wrongful Act shall include any actual or alleged act, error or omission by an **Insured** in a settlor capacity as respects a **Plan**.

B. Disproven Allegation Protection

In the event that an allegation which triggers potential coverage under this **Coverage Section** is disproven, so that a **Claim** is outside the scope of coverage under this **Coverage Section**, the **Insurer** shall not seek recovery of amounts that it has previously paid. Situations that would trigger this protection include, but are not limited to when it is proven that:

(1) an **Executive** or employee of the **Organization** who was alleged to be a **Plan** fiduciary was not in fact a **Plan** fiduciary;

(2) an alleged **Plan** was not a plan or was not a covered **Plan**; or

(3) an **Organization** alleged to be the sponsor of a **Plan** was not in fact the sponsor of such plan.

C. Independent Fiduciary Fees

Loss shall include reasonable and necessary fees and expenses of an independent fiduciary if such fiduciary is retained to review a proposed settlement of a covered **Claim**. **Loss** shall also include reasonable and necessary fees and expenses of any law firm hired by such independent fiduciary to facilitate a review of such proposed settlement.

D. Managed Care Coverage

This policy shall pay the **Loss** of an **Insured** arising from a **Claim** made against such **Insured** alleging improper or negligent selection of a **Managed Care Services** provider or denial or delay of any benefit under a health care, pharmaceutical, vision, or dental **Plan** of an **Insured**.

E. LMRA Coverage

If, and during the time that, coverage is provided under this **Coverage Section**, then this policy shall also pay the **Loss** of an **Insured** arising from an allegation that such **Insured** violated Section 301 of the Labor Management Relations Act ("LMRA") relating to alleged violations of collectively bargained contracts in connection with a **Plan**.

F. First Dollar E-Discovery Consultant Services

For any **Claim**, no Retention shall apply to the first $25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

***G.** Global Liberalization*

For **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply the terms and conditions of this **Coverage Section** as amended to include those of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to **Insureds** in the **Foreign Jurisdiction**. This *Global Liberalization Clause*

shall not apply to any provision of any policy that has worldwide effect, including but not limited to any provision addressing limits of liability (primary, excess or sublimits), retentions, other insurance, non-renewal, duty to defend, defense within or outside the limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

3. INDEMNIFICATION PROTECTIONS

A. Advancement

If for any reason (including, but not limited to insolvency) an **Organization** and the relevant **Plan** fail or refuse to advance, pay or indemnify covered **Loss** of an **Insured Person** within the applicable Retention, if any, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until either (i) an **Organization** or **Plan** has agreed to make such payments, or (ii) the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Organization** or any relevant **Plan** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**.

Advancement, payment or indemnification of an **Insured Person** by the **Organization** or **Plan** is deemed "failed" if it has been requested by an **Insured Person** in writing and has not: been provided by; agreed to be provided by; or acknowledged as an obligation by an **Organization** or **Plan** within sixty (60) days of such request; and advancement, payment or indemnification by the **Organization** or **Plan** is deemed "refused" if such **Organization** or **Plan** gives a written notice of the refusal to the **Insured Person**. Advancement, payment or indemnification of an **Insured Person** by the **Organization** or **Plan** shall only be deemed "failed" or "refused" to the extent such advancement, payment or indemnification is not: provided; agreed to be provided; or acknowledged by and collectible from any **Organization** or **Plan**. Any payment or advancement by the **Insurer** within an applicable Retention shall apply toward the exhaustion of the **Limits of Liability**.

B. Order Of Payments

In the event of a **Loss** arising from a covered **Claim** for which payment is due under the provisions of this **Coverage Section**, the **Insurer** shall in all events:

(1) First, pay all **Loss** covered under Insuring Agreement A. *Insured Person Coverage*;

(2) Second, only after payment of **Loss** has been made pursuant to subparagraph (1) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement B. *Indemnification Of Insured Person Coverage*; and

(3) Lastly, only after payment of **Loss** has been made pursuant to subparagraphs (1) and (2) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement C. *Organization and Plan Coverage* and Insuring Agreement D. *Voluntary Compliance Loss Coverage*.

In the event the **Insurer** withholds payment pursuant to subparagraphs (2) and/or (3) above, then the **Insurer** shall, at such time and in such manner as shall be set forth in instructions of the chief executive officer of the **Named Entity**, remit such payment to an **Organization** or directly to or on behalf of an **Insured**.

4. DEFENSE AGREEMENTS

A. Insurer's Duty to Defend

Except as hereinafter stated, the **Insurer** shall have both the right and duty to defend any **Claim** against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent.

The **Insured** shall have the right to effectively associate with the **Insurer** in the defense of any **Claim**, including, but not limited to negotiating a settlement, subject to the provisions of this Clause 4. The **Insurer** shall not, however, be obligated to defend any **Claim** after the **Policy Aggregate** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability** has been exhausted.

B. Insured's Option to Assume Defense

Notwithstanding the above, the **Insureds** shall have the right to assume the defense of any **Claim** made against them. This right shall be exercised in writing by the **Named Entity** on behalf of all **Insureds** within sixty (60) days of the reporting of the **Claim** to the **Insurer**. Upon receipt of such written request, the **Insurer** shall tender the defense of the **Claim** to the **Insureds**. Once the defense has been so tendered, the **Insurer** cannot re-assume the defense of the **Claim**. The **Insurer** shall have the right, but not the obligation, to effectively associate with the **Insureds** in the defense of any **Claim** that involves or appears reasonably likely to involve the **Insurer**, including, but not limited to negotiating a settlement. Provided that the **Insurer** shall be permitted to effectively associate with the **Insureds** in the defense of any **Claim**, the **Insurer's** consent to settlements, stipulated judgments and **Defense Costs** shall not be unreasonably withheld.

C. Advancement of Defense Costs

If the **Insureds** against whom a **Claim** is made exercise their right to assume the defense of such **Claim**, the **Insurer** shall advance, excess of any applicable Retention, covered **Defense Costs**, on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills for those **Defense Costs**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under this **Coverage Section** to payment of such **Loss**.

D. Claims Participation and Cooperation

The **Insureds** shall give the **Insurer** full cooperation and such information as it may reasonably require.

The failure of any **Insured** to give the **Insurer** cooperation and information as it may reasonably require shall not impair the rights of any **Insured Person** under this **Coverage Section**.

The **Insureds** shall contest any **Claim** made against them and shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any **Defense Costs**, without the prior written consent of the **Insurer**.

E. Full Settlement Within Retention/ Consent Waived

If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention (inclusive of **Defense Costs**) for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.

5. EXCLUSIONS

A. Full Severability Of Exclusions

In determining whether any of the exclusions set forth in Clause 5.B below apply, the **Wrongful Acts** of any **Insured** shall not be imputed to any other **Insured**.

B. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured**:

(1) *Conduct* arising out of, based upon or attributable to any:

(a) profit or advantage to which the **Insured** was not legally entitled; or

(b) deliberate criminal or deliberate fraudulent act, or any knowing or willful violation of any statute, rule or law, including, but not limited to **Employee Benefit Law**, by the **Insured**;

if established by any final, non-appealable adjudication in any action or proceeding other than an action or proceeding initiated by the **Insurer** to determine coverage under the policy;

(2) *Pending & Prior Litigation* alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (a) litigation; or (b) administrative or regulatory proceeding or investigation of which any **Insured** had notice; or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;

(3) *Discrimination* for discrimination in violation of any law, except that this exclusion shall not apply to discrimination in violation of **Employee Benefit Law**;

(4) *Bodily Injury & Property Damage* for bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, this exclusion shall not apply to: (a) **Defense Costs** incurred in the defense of a **Claim** for a violation of **ERISA** by an **Insured**; or (b) the coverage afforded under Extension 2.D. *Managed Care Coverage*; or

(5) *Prior Notice* alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related **Wrongful Act** alleged or contained, in any claim which has been reported, or in any circumstances of which notice has been given under any employee benefit plan fiduciary liability insurance policy in force prior to the **Inception Date** of this policy.

6. RETENTION

In addition to the provisions of Clause 2. RETENTION of the **General Terms and Conditions**, in no event shall a Retention be applied to the following: (i) **Non-Indemnifiable Loss**; (ii) **Voluntary Compliance Loss**; (iii) **Section 502(c) Penalties**; (iv) **Pension Protection Act Penalties**; (v) **HIPAA Penalties**; (vi) **Health Care Reform Penalties**; (vii) **Section 4975 Penalties**, or (viii) the first $25,000 in **Defense Costs** incurred for **E-Discovery Consultant Services**.

7. LIMITS OF LIABILITY

In addition to the provisions of Clause 3. LIMITS OF LIABILITY of the **General Terms and Conditions**, the following sublimits shall apply to the coverage provided by this **Coverage Section**:

*(a) **Voluntary Compliance Loss**:*	*$250,000 or 5% of the **Separate Limit of Liability** or **Shared Limit of Liability** stated in the Declarations for this **Coverage Section**, whichever is less*
*(b) **Section 502(c) Penalties**:*	*$250,000 or 5% of the **Separate Limit of Liability** or **Shared Limit of Liability** stated in the Declarations for this **Coverage Section**, whichever is less*
*(c) **Pension Protection Act Penalties**:*	*$250,000 or 5% of the **Separate Limit of Liability** or **Shared Limit of Liability** stated in the Declarations for this **Coverage Section**, whichever is less*
*(d) **HIPAA Penalties**:*	*$1.5 million or the **Separate Limit of Liability** or **Shared Limit of Liability** stated in the Declarations for this **Coverage Section**, whichever is less*
*(e) **Health Care Reform Penalties**:*	*$250,000 or 5% of the **Separate Limit of Liability** or **Shared Limit of Liability** stated in the Declarations for this **Coverage Section**, whichever is less*
*(f) **Section 4975 Penalties**:*	*$250,000*

As stated in Clause 3 of the **General Terms and Conditions**, each sublimit of liability in this policy is the maximum limit of the **Insurer's** liability for all **Loss** in the aggregate under this policy that is subject to that sublimit of liability. All sublimits of liability shall be part of, and not in addition to, the **Policy Aggregate** and this **Coverage Section's** applicable **Separate Limit of Liability** or **Shared Limit of Liability**.

8. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

A. Reporting a Claim

The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**, notify the **Insurer** in writing of a **Claim** made against an **Insured** as soon as practicable after the **Named Sponsor's** Risk Manager or General Counsel (or equivalent position) first becomes aware of the **Claim**. In all such events, notification must be provided no later than:

(i) sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable) if this **Coverage Section** is not renewed with the **Insurer**; or

(ii) two hundred and seventy (270) days after the end of the **Policy Period** or **Discovery Period** (if applicable) if the expiring **Coverage Section** is renewed with the **Insurer**.

As exceptions to the foregoing notice provision the **Insureds** shall have no obligation to give notice of:

(1) a fact-finding investigation before the earliest of the time that: (i) it becomes a **Litigated Matter**; (ii) a **Wrongful Act** is alleged in writing; or (iii) any **Insured** has incurred defense costs for which coverage is being sought; or

(2) an **Internal Appeal** before the earliest of the time that: (i) it becomes a **Litigated Matter**; (ii) any investment loss within a **Plan** is alleged; or (iii) any **Insured** has incurred defense costs for which coverage is being sought.

B. Reporting Voluntary Compliance Loss and Covered Penalties

The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**, notify the **Insurer** in writing of a **Voluntary Compliance Loss** or of **Covered Penalties** as soon as practicable after such **Voluntary Compliance Loss** is first ascertained by or assessed against an **Insured**, or such **Covered Penalties** are first imposed, respectively, but in all such events no later than sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable).

C. Relation Back to the First Reported Claim

Solely for the purpose of establishing whether any subsequent **Related Claim** was first made during the **Policy Period** or **Discovery Period** (if applicable), if during any such period a **Claim** was first made and reported in accordance with Clause 8.A. above, then any **Related Claim** which is subsequently made against an **Insured** and that is reported to the **Insurer** shall be deemed to have been first made at the time that such previously reported **Claim** was first made.

With respect to any subsequent **Related Claim**, this policy shall only cover **Loss** incurred after such subsequent **Related Claim** is actually made against an **Insured**.

D. Relation Back to Reported Circumstances Which May Give Rise to a Claim

If during the **Policy Period** or **Discovery Period** (if applicable) an **Insured** becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances and that is reported in accordance with Clause 8.A. above shall be deemed to have been first made at the time of the

notification of circumstances for the purpose of establishing whether such subsequent **Claim** was first made during the **Policy Period** or during the **Discovery Period** (if applicable). Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured**. In order to be effective, notification of circumstances must specify the facts, circumstances, nature of the anticipated alleged **Wrongful Act** and reasons for anticipating such **Claim**, with dates, persons and entities potentially involved; however, notification that includes a copy of an agreement to toll a statute of limitations shall be presumed sufficiently specific as to the potential **Claims** described within that agreement.

9. DISCOVERY PREMIUM

In the event the **Named Entity** shall cancel or the **Named Entity** or the **Insurer** shall refuse to renew this **Coverage Section**, the **Additional Premium Amount** for: (a) one year shall be no more than 125% of the **Full Annual Premium**; and (b) two to six years shall be an amount to be determined by the **Insurer**. As used herein, "**Full Annual Premium**" means the premium level in effect for this **Coverage Section** immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, the **Additional Premium Amount** shall be an amount to be determined by the **Insurer**.

10. PANEL COUNSEL AND E-CONSULTANT FIRMS

A. Pre-Authorized Defense Attorneys

The list of approved panel counsel law firms ("**Panel Counsel**") is accessible through the online directory at http://www.aig.com/us/panelcounseldirectory under the "Fiduciary Liability (ERISA & Non-ERISA)" link. The list provides **Insureds** with a choice of law firms from which a selection of legal counsel shall be made to conduct the defense of any: (1) **Claim** brought by any government entity, or (2) **Claim** brought in the form of a class or representative action (collectively "**Designated Claim**").

In the event the **Insurer** is operating under a duty to defend pursuant to Clause 4.A. of this **Coverage Section**, then the **Insurer** shall select a **Panel Counsel** to defend the **Insureds** in a **Designated Claim**. Upon the written request of the **Named Entity**, the **Insurer** may consent to a different **Panel Counsel** selected by the **Named Entity** to defend the **Insureds**, which consent shall not be unreasonably withheld.

In the event the **Insureds** have assumed the defense of the **Claim** pursuant to Clause 4.B. of this **Coverage Section**, then the **Insureds** shall select a **Panel Counsel** to defend the **Insured** in a **Designated Claim**. In addition, with the express prior written consent of the **Insurer**, an **Insured** may select a **Panel Counsel** different from that selected by another **Insured** defendant if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

The selection of a **Panel Counsel** to defend a **Designated Claim** shall not be restricted to the jurisdiction in which the **Designated Claim** is brought.

The list of **Panel Counsel** may be amended from time to time by the **Insurer**. However, if a firm is removed from the list during the **Policy Period**, the **Insureds** shall be entitled to select such firm to conduct the defense of any **Designated Claim** made against such **Insureds** during the **Policy Period**.

B. Pre-Approved E-Consultant Firms

The list of pre-approved **E-Consultant Firms** is accessible through the online directory at http://www.aig.com/us/panelcounseldirectory under the "e-Consultant Panel Members" link.

The list provides the **Insureds** with a choice of firms from which a selection of an **E-Consultant Firm** shall be made. Any **E-Consultant Firm** may be hired by an **Insured** to perform **E-Discovery Consultant Services** without further approval by the **Insurer**.

11. SUBSIDIARY AND PLAN COVERAGE

A. Former Subsidiaries

In the event the **Named Sponsor** loses **Management Control** of a **Subsidiary** during or prior to the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this policy, but only with respect to **Claims** for **Wrongful Acts** that occurred or are alleged to have occurred during the time that the **Named Sponsor** had **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**.

B. Scope Of Subsidiary Coverage

Coverage as is afforded under this policy with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** thereof shall only apply for **Wrongful Acts** committed or allegedly committed during the time that such **Subsidiary** and such **Insured Person** meet the respective definitions of **Subsidiary** and **Insured Person** set forth in this **Coverage Section**.

C. Scope Of Plan Coverage

Coverage as is afforded under this **Coverage Section** with respect to a **Claim** made against any **Plan** shall only apply for **Wrongful Acts** that occurred or that are alleged to have occurred prior to the date any such **Plan** was sold, spun-off, transferred or terminated or prior to the date that the **Sponsor Organization** or **Insured Person** ceases to be a fiduciary or ceases his, her or its **Administration** of a sold, spun-off or transferred **Plan**, or in the case of a terminated **Plan**, prior to the final date of asset distribution of such **Plan**.

12. APPLICATION AND UNDERWRITING

A. Application And Reliance

The **Insurer** has relied upon the accuracy and completeness of the statements, warranties and representations contained in the **Application**. All such statements, warranties and representations are the basis for this **Coverage Section** and are to be considered as incorporated into this **Coverage Section**.

B. Insured Person Coverage Non-Rescindable

Under no circumstances shall the coverage provided by this **Coverage Section** for **Loss** under Insuring Agreement A. *Insured Person Coverage* be deemed void, whether by rescission or otherwise, once the premium has been paid.

C. Severability Of The Application

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Organization** or any **Insured Person** shall be imputed to any other **Insured Person**.

If the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Coverage Section**, then the **Insurer** shall have the right to void coverage under this **Coverage Section**, *ab initio*, with respect to:

(1) **Loss** under Insuring Agreement B. *Indemnification Of Insured Person Coverage* for the indemnification of any **Insured Person** who knew, as of the inception date of the **Policy Period**,

the facts that were not accurately and completely disclosed; and

(2) **Loss** under Insuring Agreement C. *Organization and Plan Coverage* if:

(i) the person who executed the **Application**; or

(ii) any past or present chief executive officer or chief financial officer of the **Named Entity**,

knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

13. PAYMENTS AND OBLIGATIONS OF ORGANIZATIONS AND OTHERS

A. Indemnification By Organizations

The **Organizations** agree to indemnify the **Insured Persons** and/or advance **Defense Costs** to the fullest extent permitted by law. If the **Insurer** pays under this **Coverage Section** any indemnification or advancement owed to any **Insured Person** by any **Organization** within an applicable Retention, then that **Organization** shall reimburse the **Insurer** for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Organization** to the **Insurer**. The failure of an **Organization** to perform any of its obligations to indemnify the **Insured Persons** and/or advance **Defense Costs** under this **Coverage Section** shall not impair the rights of any **Insured Person** under this **Coverage Section**.

B. Other Insurance And Indemnification

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is specifically written as excess insurance over the applicable **Separate Limit of Liability** or **Shared Limit of Liability** provided by this **Coverage Section**. This **Coverage Section** shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this **Coverage Section** may be obligated to pay **Loss**. Such insurance as is provided by this **Coverage Section** shall apply as primary to any personal "umbrella" excess liability insurance purchased by an **Insured Person**.

C. Subrogation and Waiver of Recourse

To the extent of any payment under this **Coverage Section**, the **Insurer** shall be subrogated to all of the **Organizations'** and **Insureds'** rights of recovery. Each **Organization** and each **Insured Person** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured Person**.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Coverage Section** unless the Conduct Exclusion applies with regard to such **Insured**.

In the event that this **Coverage Section** has been purchased by an **Insured** other than a **Plan**, it is agreed that the **Insurer** waives its right of recourse against the **Insured** under Section 410(b)(1) of ERISA as amended.

14. DEFINITIONS

The following definitions shall apply only for purposes of coverage provided under this **Coverage Section**. Terms appearing in **bold** in this **Coverage Section** but not defined herein shall have the meaning and/or value ascribed to them in the Declarations or in the *Definitions Clause* of the **General Terms and Conditions**.

Administration means, with respect to a **Plan**, counseling employees, participants, and beneficiaries; providing interpretations; handling of records; determining and calculating benefits; preparing, distributing or filing required notices or documents; or activities affecting enrollment, termination or cancellation of employees, participants, and beneficiaries under the **Plan**.

Application means:

(1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the negotiation of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy;

(2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other employee benefit plan fiduciary liability policy (or equivalent) issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time; and

(3) each and every public filing by or on behalf of an **Organization** made with any federal, state, local or foreign regulatory agency (including, but not limited to the U.S. Securities and Exchange Commission and the U.S. Department of Labor ("DOL"), CPA-audited financial statements for all **Plans**, with investment portfolios, Form 5500's and any attachments thereto for all **Plans**, any financial information in such filings, and any certifications relating to the accuracy of the foregoing), provided that such public filing was filed during the twelve (12) month period immediately preceding the inception of the **Policy Period**.

Benefits means any obligation under a **Plan** to a **Plan** participant or beneficiary that is a payment of money or property; or any privilege, right, option or perquisite.

Claim means:

(1) a written demand for monetary, non-monetary or injunctive relief, other than an initial application for benefits;

(2) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:

(i) service of a complaint or similar pleading (in the case of a civil proceeding);

(ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or

(iii) receipt or filing of a notice of charges; or

(3) a formal agency or regulatory adjudicative proceeding to which an

Insured is subject;

(4) any fact-finding investigation, whether or not a **Wrongful Act** is alleged, by the DOL or the Pension Benefit Guaranty Corporation ("PBGC") or any similar governmental authority located outside the United States, including, but not limited to the United Kingdom's Pensions Ombudsman or Pensions Regulator;

(5) any written request to toll a statute of limitations which may be applicable to any Claim that may be made for any **Wrongful Act** of any **Insured**; or

(6) any **Internal Appeal**.

"**Claim**" shall include any **Securities Claim**.

Corporate Trustee Company means any corporation formed and operating outside of the United States of America established by the **Organization** and duly appointed to act as a trustee of a **Plan**.

Covered Penalties means solely in connection with a **Plan**:

(i) *Section 502(i)* the 5% or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;

(ii) *Section 502(l)* the 20% or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**, with respect to a covered settlement or judgment;

(iii) *United Kingdom* the civil fines and penalties assessed against an **Insured** by either the United Kingdom's Pensions Ombudsman or the Pensions Regulator or any successor body thereto;

(iv) *Voluntary Compliance Loss* **Voluntary Compliance Loss** subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section**;

(v) *Section 502(c)* the civil penalties under Section 502(c) of **ERISA**, other than penalties under the Pension Protection Act, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** ("**Section 502(c) Penalties**");

(vi) *Pension Protection Act* the civil penalties under the Pension Protection Act of 2006, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** ("**Pension Protection Act Penalties**");

(vii) *HIPAA* the civil penalties for violations of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** ("**HIPAA Penalties**");

(viii) *Health Care Reform* the civil penalties imposed under rules and regulations (including interim final rules and regulations) provided by governmental agencies (including the U.S. Department of Health and Human Services, the U.S. Department of the Treasury, the U.S. Internal Revenue Service ("IRS"), and the DOL, the Office of Consumer Information and Insurance Oversight, and the Employee Benefits Security Administration), for inadvertent violations by an **Insured** of **Health Care Reform Law**, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** ("**Health Care Reform Penalties**"); and

(ix) *Section 4975* the 15% or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986, with respect to covered judgments, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** ("**Section 4975 Penalties**").

Defense Costs means reasonable and necessary fees, costs, and expenses consented to by the **Insurer** (including the cost of **E-Discovery Consultant Services** and premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and/or appeal of a **Claim** against an **Insured**.

Defense Costs shall not include the compensation of any **Insured Person** or any employee of an **Insured**.

Employee Benefit Law means:

(1) **ERISA** and any similar common or statutory law anywhere in the world (including, but not limited to the United Kingdom's Pensions Act 2004, Pensions Act 1995, and Pension Schemes Act 1993; and the Pension Benefit Standards Act, 1985 of Canada), as amended, and any rules and regulations promulgated thereunder to which a **Plan** is subject; and

(2) the privacy regulations under HIPAA; and solely with respect to subparagraph (2) of the definition of **Wrongful Act**, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

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

ERISA means the Employee Retirement Income Security Act of 1974, as amended, including, but not limited to amendments pursuant to:

(1) COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985);

(2) HIPAA;

(3) the Newborns' and Mothers' Health Protection Act of 1996;

(4) the Mental Health Parity Act of 1996;

(5) the Women's Health and Cancer Rights Act of 1998;

(6) the Pension Protection Act of 2006; and

(7) **Health Care Reform Law**;

and including any amendments thereto and regulations thereunder.

Executive means any past, present and future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture and member of the management board of a limited liability company (or equivalent position).

Foreign Policy means the standard employee benefit plan fiduciary liability insurance policy (including all mandatory endorsements, if any) approved by the **Insurer** or any of its affiliates to be sold within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this **Coverage Section**. If more than one such policy exists, then "**Foreign Policy**" means the standard basic policy form most recently offered for sale for comparable risks by the **Insurer** or any of its affiliates in that **Foreign Jurisdiction**. The term "**Foreign Policy**" shall not include any directors and officers, executive or partnership managerial, or professional liability insurance coverage.

Health Care Reform Law means the Patient Protection and Affordable Care Act ("PPACA") and the Health Care and Education Reconciliation Act of 2010.

Insured means any:

(1) **Insured Person**;

(2) **Plan**;

(3) **Organization**;

(4) **Plan Committee** of an **Organization**, in its capacity as a fiduciary, trustee or settlor of a **Plan**, or in its **Administration** of a **Plan**; or

(5) **Corporate Trustee Company**.

Insured Person means, solely with respect to a **Plan,** any past, present or future:

(1) **Executive** or employee of an **Organization** or of a **Plan** in his or her **Administration** of a **Plan** or in his or her capacity as a fiduciary or trustee of a **Plan**;

(2) member of a pension committee of an **Organization** in his, her, or its capacity as a fiduciary or in his, her, or its **Administration** of a **Plan**;

(3) natural person in a position equivalent to a position listed in subparagraph (1) or (2) above in the event that the **Organization** is operating in a **Foreign Jurisdiction**; or

(4) former **Executive** or employee currently serving in a consulting or advisory capacity to a **Plan** if the **Organization** provides indemnification to such individual in the same manner as is provided to other **Insured Persons**.

"**Insured Person**" also means, solely with respect to a **Plan**, any past, present or future **Executive** or employee of an **Organization** in his or her settlor capacity as respects a **Plan**.

"**Insured Person**" shall not include any individual in his or her capacity as an employee of any third party, including a service provider, other than a

Corporate Trustee Company.

Internal Appeal means an appeal of an adverse benefits determination by an **Insured** pursuant to the DOL's claim procedure regulation at 29 C.F.R. Section 2560.503-1(h) or similar claim procedures pursuant to applicable law.

Litigated Matter means any civil, criminal, or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (1) service of a complaint or similar pleading (in the case of a civil proceeding); or (2) return of an indictment, information or similar document (in the case of a criminal proceeding).

Loss means damages, settlements, judgments (including pre/post-judgment interest on a covered judgment), **Defense Costs**, **Voluntary Compliance Loss** and **Covered Penalties**; however, "**Loss**" shall not include:

(1) civil or criminal fines or penalties other than **Covered Penalties**;

(2) taxes or tax penalties other than **Covered Penalties**;

(3) cleanup costs relating to hazardous materials, pollution or product defects;

(4) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**;

(5) wages, tips, and commissions;

(6) **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Insured Person**; provided, however, that **Loss** shall include a monetary award, or fund for settling, a **Claim** against any **Insured** to the extent it alleges a loss to a **Plan** and/or loss in the actual accounts of participants in a **Plan** by reason of a change in value of the investments held by that **Plan**, including, but not limited to the securities of the **Organization**, regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs as "benefits" or held by a court to be "benefits"; and

(7) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

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

Defense Costs shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (1) – (7) above, subject to the other terms, conditions, and exclusions of this policy.

Managed Care Services means the administration or management of a health care, pharmaceutical, vision or dental **Plan** utilizing cost control mechanisms, including, but not limited to utilization review, case management, disease management,

pharmacy management, the use of a preferred provider medical, vision or dental network, or a health maintenance organization.

Management Control means:

(1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company; or

(2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Sponsor Organization**, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

Multiemployer Plan means any multiemployer plan, as defined by **ERISA**, which is operated jointly by the **Organization**, a labor organization, and one or more other employers for the benefit of the employees of the **Organization** among others.

Non-Indemnifiable Loss means **Loss** that has not been indemnified by either an **Organization** or a **Plan**, and for which an **Organization** is not permitted or required to indemnify an **Insured Person** pursuant to law or contract or the charter, by-laws, operating agreement or similar documents of an **Organization**.

Organization has the meaning set forth in the **General Terms and Conditions**.

Additionally, solely for purposes of this **Coverage Section**, "**Organization**" also means a **Corporate Trustee Company** in any **Foreign Jurisdiction**.

Plan means any:

(1) qualified or non-qualified plan, fund, trust or program, including, but not limited to any pension plan, welfare plan, health savings account plan, IRA-based plan, stock option plan, stock purchase plan, deferred compensation program, supplemental executive retirement program, top-hat plan, excess benefit plan, cafeteria plan, dependent care assistance program, fringe benefit plan or voluntary employees' beneficiary association as defined in the Internal Revenue Code of 1986, as amended ("VEBA") established anywhere in the world, which is sponsored solely by an **Organization,** and with respect to a collectively bargained **Plan**, operated jointly by an **Organization** and a labor organization, in each case solely for the benefit of such **Organization's** current or former employees or **Executives**, and which was in existence on or before the **Inception Date** of this policy.

(2) plan described in subparagraph (1) above acquired during the **Policy Period**. However, if such plan is a pension plan:

(a) acquired as a result of the **Organization's** acquisition of a **Subsidiary** whose assets total more than 25% of the total consolidated assets of the **Organization** as of the **Inception Date** of this policy; or

(b) with assets that total more than 25% of the total consolidated assets of all covered pension plans as of the **Inception Date** of this policy;

then this policy shall apply to such plan (solely with respect to a **Wrongful Act(s)** occurring after the date of such acquisition), but only upon the condition that within ninety (90) days of its acquisition, the **Named Entity** shall have provided the **Insurer** with information and agreed to any additional premium or amendment of the provisions of the policy required by the **Insurer** relating to such new **Plan**. The ninety (90) day reporting condition shall not apply if such new plan is not one of the five largest pension plans (by asset size) of the **Organization**, if the failure to report such **Plan** within the ninety (90) day reporting period was due to inadvertent omission by the **Named Entity**, and if upon discovery of such omission the **Named Entity** notifies the **Insurer** as soon as practicable and provides any information and pays any premium required by the **Insurer** relating to such **Plan**.

(3) plan or program described in subparagraph (1) above that was created, considered, developed or proposed during the **Policy Period**.

The definition of **Plan** shall also include the following government-mandated programs: unemployment insurance, Social Security, or disability payments, but solely with respect to a **Wrongful Act** defined in subparagraph (2) of the definition of **Wrongful Act** in this **Coverage Section**.

Coverage under this **Coverage Section** shall not extend to a **Multiemployer Plan** itself, its contributing employer(s) or, except as set forth in subparagraph (4) of the definition of **Wrongful Act**, any fiduciary or administrator of a **Multiemployer Plan**.

Plan Committee means any employee benefit committee, including, but not limited to any plan investment or administration committee, that is established by an **Organization** and that is comprised entirely of **Insured Persons**.

Related Claim means a **Claim** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were alleged in another **Claim** made against an **Insured**.

Securities Claim means any **Claim** in which a plaintiff alleges a loss or seeks damages of more than the **Securities Retention** amount or $1,000,000, whichever is less, based upon a change in or challenge to the price or valuation of securities of or issued by: (i) the **Organization**, (ii) the parent of the **Organization**, (iii) any company that is acquired in whole or in part by the **Organization**, or (iv) any former parent of any company that is acquired in whole or in part by the **Organization** (hereinafter (i) through (iv) collectively referred to as "Employer Securities"), even if such **Claim** also contains unrelated allegations.

The definition of **Securities Claim** shall not be triggered by any **Claim** in which plaintiffs allege a loss or seek damages as a result of a **Plan's** allegedly excessive fees or excessive cash holdings within an investment fund designed to hold Employer Securities as long as there is no allegation based upon a drop in the price or decrease in the valuation of the Employer

Securities.

Securities Retention means the Retention applicable to **Loss** that arises out of a **Securities Claim**.

Subsidiary means any past, present or future:

(1) for-profit entity of which the **Named Sponsor** has or had **Management Control** either directly or indirectly through one or more of its other **Subsidiaries**; and

(2) not-for-profit entity sponsored exclusively by a **Sponsor Organization**.

The term **Subsidiary** shall automatically apply to any new **Subsidiary** acquired or created during the **Policy Period**.

A for-profit entity ceases to be a **Subsidiary** when the **Named Sponsor** no longer maintains **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**. A not-for-profit entity ceases to be a **Subsidiary** when such entity is no longer sponsored exclusively by a **Sponsor Organization**.

Voluntary Compliance Loss means fines, penalties, sanctions, and reasonable and necessary fees, costs or expenses related to the assessment of or correction of a **Plan's** non-compliance in accordance with any **Voluntary Compliance Program** and which are incurred during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this **Coverage Section** is a continuous renewal).

"Voluntary Compliance Loss" shall not include any compensation of any **Insured Persons** or any employee of an **Insured**.

Voluntary Compliance Program means any voluntary compliance resolution program or similar voluntary settlement program administered by the DOL, IRS, PBGC or other similar governmental authority or any similar program administered by any governmental authority located outside the United States of America, to correct any inadvertent non-compliance by a **Plan**, including, but not limited to:

(1) Employee Plans Compliance Resolution System;

(2) Delinquent Filer Voluntary Compliance Program;

(3) Voluntary Fiduciary Correction Program;

(4) Premium Compliance Evaluation Program; and

(5) Participant Notice Voluntary Correction Program.

Wrongful Act means:

(1) any actual or alleged violation by an **Insured** of any of the responsibilities, obligations or duties imposed upon fiduciaries by **Employee Benefit Law** with respect to a **Plan**, including, but not limited to the actual or alleged improper selection of or inadequate monitoring of third-party service providers; or any allegation made against an **Insured** solely by reason of his, her or its actual or alleged status as a fiduciary, but only with respect to a **Plan**;

(2) any actual or alleged act, error or omission by an **Insured** in the

Administration of any **Plan**, including, but not limited to the actual or alleged failure to properly and timely provide COBRA notices or other required notices, the alleged failure to make timely determinations of eligibility for benefits; or any allegation made against an **Insured** solely by reason of his, her or its actual or alleged **Administration** of a **Plan**;

(3) any negligent act, error or omission by an **Organization**, its **Executives** or employees in facilitating the administration of a **Multiemployer Plan**; and

(4) if a plan identified as a **Multiemployer Plan** is referenced by specific written endorsement attached to this policy and any required premium is paid, any matter arising out of an **Insured Person's** actual or alleged service as a fiduciary of, or actual or alleged **Administration** of, such **Multiemployer Plan** when such service or **Administration** is at the specific written request or direction of the **Organization**.

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