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In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Section, the Company and the Insureds agree as follows:

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**I. INSURING CLAUSES**

**(A) Fiduciary Liability Coverage**

The **Company** shall pay **Loss** on behalf of the **Insureds** resulting from any **Fiduciary Claim** first made against such **Insured** during the **Policy Period**, or any applicable Extended Reporting Period, for **Wrongful Acts** by the **Insureds** or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible.

**(B) Voluntary Settlement Program Coverage (Optional)**

If the Voluntary Settlement Program Coverage is purchased, as set forth in Item 3 of the Declarations of this Coverage Section, the **Company** shall pay **Settlement Fees** on behalf of the **Insureds** following a **Settlement Program Notice** provided during the **Policy Period**, or any applicable Extended Reporting Period, in an amount not to exceed \$100,000. Such amount shall be part of and not in addition to the Limit of Liability, as set forth in Item 2 of the Declarations of this Coverage Section.

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**II. DEFINITIONS**

For purposes of this Coverage Section:

**(A) Administration** means:

- (1) giving advice to **Employees** with respect to any **Plan**;
- (2) providing interpretations with respect to any **Plan**; or
- (3) handling of records or effecting enrollment, termination or cancellation of **Employees** under any **Plan**.

**(B) Claim** means for the purposes of coverage under:

- (1) Insuring Clause (A): any **Fiduciary Claim**; or
- (2) Insuring Clause (B): any **Settlement Program Notice**.

**(C) Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Insured Organization**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds.

**(D) Employee** means any natural person whose labor or service is engaged by and directed by the **Insured Organization**, including part-time, seasonal, leased and temporary employees as well as volunteers. **Employee** shall not include any independent contractor.



- (E) **Executive** means any natural person specified below:
- (1) duly elected or appointed directors, officers, members of the Board of Managers or management committee members of any **Insured Organization** incorporated in the United States of America;
  - (2) in-house general counsel of any **Insured Organization** incorporated in the United States of America; or
  - (3) equivalent positions of (1) or (2) above in any **Insured Organization** chartered in any other jurisdiction anywhere in the world.
- (F) **Fiduciary Claim** means:
- (1) any of the following:
    - (a) a written demand for monetary damages or injunctive relief;
    - (b) a civil proceeding commenced by the service of a complaint or similar pleading;
    - (c) a criminal proceeding commenced by a return of an indictment;
    - (d) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or
    - (e) a written notice of commencement of an investigation by the Department of Labor or the Pension Benefit Guaranty Corporation;  
against an **Insured** for a **Wrongful Act**, including any appeal therefrom; or
  - (2) a written request received by an **Insured** to toll or waive a statute of limitations, relating to a potential **Fiduciary Claim** as described in paragraph (1) above.
- (G) **Insured** means the **Insured Organization**, any **Plan** and any **Insured Person**.
- (H) **Insured Person** means:
- (1) any past, present or future **Executive**, **Employee** or trustee of the **Insured Organization** or of the **Sponsored Plan**; and
  - (2) any past, present or future natural person trustee or fiduciary of a multi-employer plan, when such person is added by specific written endorsement to this Coverage Section.



- (I) **Loss** means the total amount which any **Insured** becomes legally obligated to pay as a result of any **Claim** made against any **Insured** for **Wrongful Acts**, including, but not limited to, damages (including punitive or exemplary damages, or the multiple portion of any multiplied damage award, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, the **Company**, this Policy or the **Claim** and which is most favorable to the insurability of such damages), judgments, settlements, pre-judgment and post-judgment interest, **Settlement Fees** and **Defense Costs**. **Loss** does not include:
- (1) any amount for which an **Insured Organization** or an **Insured Person** is absolved from payment by reason of any covenant, agreement (other than indemnification of an **Insured Person** by the **Insured Organization**) or court order;
  - (2) matters uninsurable under the law pursuant to which this Policy is construed;
  - (3) taxes, fines or penalties imposed by law, except:
    - (a) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended; or
    - (b) if the Voluntary Settlement Program Coverage is purchased, as set forth in Item 3 of the Declarations of this Coverage Section, **Settlement Fees**; or
  - (4) any amount allocated to uncovered loss pursuant to Section X Allocation of the General Terms and Conditions.
- (J) **Plan** means:
- (1) any **Sponsored Plan**; and
  - (2) any government-mandated insurance for workers compensation, unemployment, social security or disability benefits for **Employees**.
- (K) **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.
- (L) **Pollution** means the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere or any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- (M) **Settlement Fees** means any fees, penalties or sanctions imposed by law under a **Settlement Program** that any **Insured** becomes legally obligated to pay as a result of **Wrongful Acts**. **Settlement Fees** shall not include costs of corrections, other than fees or penalties.
- (N) **Settlement Program** means any voluntary compliance resolution program or similar voluntary settlement program, administered by the Internal Revenue Service of the United States of America or any other governmental body, entered into by the **Insured Organization**.



- (O) **Settlement Program Notice** means prior written notice to the **Company** by the **Insured Organization** of its intent to enter into a **Settlement Program**.
- (P) **Sponsored Plan** means:
- (1) any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each are defined in the Employee Retirement Income Security Act of 1974, as amended, which is operated solely by the **Insured Organization** or jointly by the **Insured Organization** and a labor organization for the benefit of the **Employees** of the **Insured Organization** located anywhere in the world and which existed on or before the inception date of this Coverage Section or which is created or acquired after the inception date of this Coverage Section (as provided in Section XI Changes in Exposure of the General Terms and Conditions Section);
  - (2) any other employee benefit plan or program not subject to Title 1 of the Employee Retirement Income Security Act of 1974, as amended, sponsored solely by the **Insured Organization** for the benefit of the **Employees**, including any excess benefit plan located anywhere in the world and which existed on or before the inception date of this Coverage Section or which is created or acquired after the inception date of this Coverage Section (as provided in Section XI Changes in Exposure of the General Terms and Conditions Section); or
  - (3) any other plan, fund, or program specifically included as a **Sponsored Plan** by endorsement to this Coverage Section.

**Sponsored Plan** shall not include any employee stock ownership plan created or acquired by the **Insured Organization** after the inception date of this Policy as set forth in Item 2 of the Declarations of the General Terms and Conditions Section (except as otherwise provided in Section V Creation or Acquisition of an ESOP of this Coverage Section) or any multi-employer plan regardless of the date such plan was created.

- (Q) **Wrongful Act** means with respect to any **Plan**:
- (1) any breach of the responsibilities, obligations or duties imposed upon fiduciaries of the **Sponsored Plan** by the Employee Retirement Income Security Act of 1974, or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world;
  - (2) any negligent act, error or omission in the **Administration** of any **Plan** committed, attempted or allegedly committed or attempted by any **Insured**; or
  - (3) any other matter claimed against such **Insured** solely by reason of their service as a fiduciary of any **Sponsored Plan**.
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### III. EXCLUSIONS

- (A) No coverage will be available under this Coverage Section for any **Claim** against an **Insured**:



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- (1) based upon, arising from, or in consequence of any circumstance, if written notice of such circumstance has been given under any policy of which this Coverage Section is a direct or indirect renewal or replacement and if such prior policy affords coverage (or would afford such coverage except for the exhaustion of its limits of liability) for such **Claim**, in whole or in part, as a result of such notice;
  - (2) based upon, arising from, or in consequence of a written demand, suit, or other proceeding pending, or order, decree or judgment entered for or against any **Insured** on or prior to the applicable Pending or Prior Litigation Date as set forth in Item 5 of the Declarations of this Coverage Section, or the same or any substantially similar fact, circumstance or situation underlying or alleged therein;
  - (3) based upon, arising from, or in consequence of **Pollution**, including but not limited to any **Claim** for financial loss to any **Insured Organization** or **Plan**, its security holders or its creditors;
  - (4) for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
  - (5) based upon, arising from, or in consequence of liability of others assumed by any **Insured** under any written or oral contract or agreement, provided that this Exclusion (A)(5) shall not apply to the extent that:
    - (a) an **Insured** would have been liable in the absence of the contract or agreement; or
    - (b) the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;
  - (6) for the failure of the **Insured** to comply with any workers compensation, unemployment insurance, social security or disability benefits law or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world, except the Consolidated Omnibus Budget Reconciliation Act of 1985, or any amendments thereto or any rules or regulations promulgated thereunder;
  - (7) based upon, arising from, or in consequence of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such **Insured**, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such a deliberately fraudulent act or omission or willful violation; or
  - (8) based upon, arising from, or in consequence of any **Insured** having gained in fact any profit, remuneration or financial advantage to which such **Insured** was not legally entitled.
- (B) No coverage will be available under this Coverage Section for **Loss**, other than **Defense Costs**,
- (1) which constitutes the return or reversion to an employer of any contribution or asset of a **Plan**;
  - (2) which constitutes costs of compliance with any order for, grant of or agreement to provide non-monetary relief; or



- (3) which constitutes benefits due or to become due under any **Plan**, or benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, except to the extent that:
- (a) an **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation; and
  - (b) recovery for the benefits is based upon a covered **Wrongful Act**.
- (C) No coverage will be available under this Coverage Section for **Loss**, other than **Defense Costs**, resulting from any **Claim** based upon, arising from, or in consequence of the failure to collect an employer's contributions owed to a **Plan** unless the failure is because of the negligence of any **Insured**.
- (D) **Severability of Exclusions**
- With respect to the Exclusions (A)(7) and (A)(8) in this Coverage Section, no fact pertaining to or knowledge possessed by any **Insured** shall be imputed to any other **Insured** to determine if coverage is available.
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#### **IV. DEFENSE OUTSIDE THE LIMITS OF LIABILITY (Optional)**

Solely in the event that Defense Outside the Limits of Liability is purchased, as set forth in Item 3 of the Declarations of this Coverage Section, **Defense Costs** shall be in addition to, and not a part of, the Limit of Liability as set forth in Item 2 of the Declarations of this Coverage Section; provided that, when such Limit of Liability is exhausted by payment of **Loss**, other than **Defense Costs**, the **Company's** obligation to pay **Defense Costs** and its obligation to defend or continue to defend any **Claim** shall cease.

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#### **V. CREATION OR ACQUISITION OF AN ESOP**

If the **Insured Organization** creates or directly or indirectly acquires an employee stock ownership plan ("ESOP"), the **Insured Organization** will promptly give the **Company** written notice thereof and all information requested by the **Company**. The **Company** shall provide to the **Insured Organization** a quotation for coverage for **Claims** based upon, arising from, or in consequence of such ESOP, subject to such terms, conditions, limitations of coverage and such additional premium as the **Company**, in its sole discretion, may require.

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#### **VI. TERMINATION OF PLAN**

If an **Insured Organization** terminates a **Plan** before or after the inception date of this Coverage Section, coverage under this Coverage Section, with respect to such terminated **Plan**, shall continue until termination of this Coverage Section for those who were an **Insured** at the time of such **Plan** termination or who would have been an **Insured** at the time of such termination if this Coverage Section had been in effect, with respect to **Wrongful Acts** committed or allegedly committed prior to or after the date the **Plan** was terminated.

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**VII. OTHER INSURANCE**

If any **Loss** under this Coverage Section is insured under any other valid and collectible insurance policy(ies), prior or current, then this Coverage Section shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided in this Coverage Section.

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**VIII. COORDINATION OF COVERAGE**

Any **Loss** covered under this Coverage Section and the Employment Practices Liability Coverage Section, if purchased as set forth in Item 4 of the Declarations of the General Terms and Conditions Section, shall be first covered under the Employment Practices Liability Coverage Section, subject to the terms, conditions and limitations therein. Any remaining portion of such **Loss** otherwise covered under this Coverage Section which is not paid under the Employment Practices Liability Coverage Section shall be covered under this Coverage Section, subject to its terms, conditions and limitations.

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**SPECIMEN**