



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

Insuring Clauses

Fiduciary Liability Coverage Insuring Clause 1

1. The Company shall pay, on behalf of the **Insureds**, **Loss** for which the **Insureds** become legally obligated to pay on account of any **Fiduciary Claim** first made against the **Insureds** during the **Policy Period**, or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted before or during the **Policy Period** by such **Insureds**, or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible, but only if such **Fiduciary Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 10 of this coverage section.
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Voluntary Settlement Program Coverage Insuring Clause 2

2. The Company shall pay, on behalf of the **Insureds**, **Settlement Fees** and **Defense Costs** on account of any **Settlement Program Notice** first given to the Company by written notice during the **Policy Period**, or, if exercised, during the Extended Reporting Period, provided that such **Settlement Fees** and **Defense Costs** are incurred by the **Insureds** after such **Settlement Program Notice** is first given to the Company by written notice.
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Definitions

3. When used in this coverage section:

Administration means:

- (1) advising, counseling or giving notice to **Employees**, participants or beneficiaries 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**, participants or beneficiaries under any **Plan**.

Application means all signed applications, including attachments and other materials submitted therewith or incorporated therein, submitted by the **Insureds** to the Company for this coverage section or for any coverage section or policy of which this coverage section is a direct or indirect renewal or replacement. **Application** shall also include, for each **Insured**, all documents provided by the **Insureds** to the Company in connection with the underwriting or issuance of this coverage section. All such applications, attachments, materials and other documents are deemed attached to, incorporated into and made a part of this coverage section.



Claim means for the purposes of coverage under:

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

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 or benefits of the directors, officers or **Employees** of the **Organization**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds.

Domestic Partner means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.

Employee means any natural person whose labor or service is engaged by and directed by the **Organization** or any **Plan**, including any part-time and temporary employee or any volunteer. **Employee** shall not include any independent contractor.

ERISA means the Employee Retirement Income Security Act of 1974, the English Pension Scheme Act 1993, the English Pensions Act 1995, all as amended, any similar common or statutory law anywhere in the world, and any rules or regulations promulgated under any such Acts or law.

Executive means any natural person who was, now is or shall become:

- (a) a duly elected or appointed director, officer, trustee, **Manager**, duly constituted committee member, or in-house general counsel of any **Plan** or any **Organization** chartered in the United States of America; or
- (b) a holder of a position equivalent to any position described in (a) above in an **Organization** that is chartered in any jurisdiction other than the United States of America.

Fiduciary Claim means:

- (a) a written demand for monetary damages;
- (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 or information;
- (d) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document or by the entry of a formal investigative order or similar document; or
- (e) a written notice of commencement of a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including but not limited to, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services, the United Kingdom Occupational Pensions Regulatory Authority,

against any **Insured** for a **Wrongful Act**, including any appeal therefrom.



Except as may otherwise be provided in Subsection 8, Subsection 9(f), or Subsection 10(b) of this coverage section, a **Fiduciary Claim** will be deemed to have first been made when, with respect to any civil or criminal proceeding described in (b) or (c) above, such **Fiduciary Claim** is commenced as set forth in this definition or, in the case of a written demand, written notice, or formal civil administrative or civil regulatory proceeding described in (a), (d), or (e) above, when such demand, notice, or proceeding is first received by an **Insured**.

Insured means the **Organization**, any **Plan** and any **Insured Person**.

Insured Person means:

- (a) any past, present or future **Executive** or **Employee**; and
- (b) any past, present or future natural person trustee or fiduciary of a multi-employer plan, if such person in such capacity is added as an **Insured Person** by specific written endorsement to this coverage section.

Loss means the amount that any **Insured** becomes legally obligated to pay on account of any covered **Fiduciary Claim**, including but not limited to damages, judgments, settlements, pre-judgment and post-judgment interest, **Defense Costs** and, solely with respect to Insuring Clause 2, **Settlement Fees**.

Loss shall not include:

- (a) any amount not indemnified by the **Organization** for which the **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- (b) any costs incurred by an **Organization** or **Plan** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (c) any amount incurred by an **Insured** in the defense or investigation of any action, proceeding, investigation or demand that is not then a **Claim** even if (A) such amount also benefits the defense of a covered **Claim**, or (B) such action, proceeding, investigation or demand subsequently gives rise to a **Claim**;
- (d) taxes, fines or penalties, including punitive, exemplary or liquidated damages, or the multiple portion of any multiplied damages award, except:
 - (i) the five percent (5%) or less, or the twenty percent (20%) or less, civil money 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;
 - (ii) any civil money penalties imposed upon an **Insured** by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder; provided any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this coverage section; or
 - (iii) solely with respect to Insuring Clause 2, **Settlement Fees**;



- (e) any amount allocated to non-covered loss pursuant to Subsection 12 of this coverage section; or
- (f) any amount not insurable under the law pursuant to which this coverage section is construed.

Organization means the **Parent Organization** and any **Subsidiary**. **Organization** shall also include any **Affiliate** added as an affiliate by specific written endorsement to the General Terms and Conditions Section of this policy.

Plan means:

- (a) any **Sponsored Plan**; and
- (b) any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for **Employees**.

Pollutants means (a) 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, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (b) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.

Related Claims means all **Claims** for **Wrongful Acts** based upon, arising from, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.

Settlement Fees means any fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation.

Settlement Fees shall not include: (a) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (b) any fees, fines, penalties or sanctions relating to a **Plan**, which, as of the earlier of the inception of this coverage section or the inception of the first policy in an uninterrupted series of policies issued by the Company of which this coverage section is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

Settlement Program means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including but not limited to, the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, or any similar program administered by a governmental authority located outside the United States.

Settlement Program Notice means prior written notice to the Company by the **Insured** of the **Insured's** intent to enter into a **Settlement Program**.



Sponsored Plan means:

- (a) any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each are defined in **ERISA**, which is operated solely by the **Organization** or jointly by the **Organization** and a labor organization solely for the benefit of the **Employees** or **Executives** of the **Organization** located anywhere in the world and which existed on or before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions or which is created or acquired after such inception date; provided (i) any coverage with respect to any such **Plan** created or acquired during the **Policy Period** shall apply only for **Wrongful Acts** committed, attempted, or allegedly committed or attempted after the effective date of such creation or acquisition and shall be subject to Subsection 14 of this coverage section, and (ii) any coverage with respect to an employee stock ownership plan created or acquired during the **Policy Period** shall be further subject to Subsection 18 of this coverage section;
- (b) any other employee benefit plan or program not subject to **ERISA** which is sponsored solely by the **Organization** for the benefit of the **Employees** or **Executives**, including any fringe benefit or excess benefit plan;
- (c) any other plan or program otherwise described in paragraphs (a) or (b) above while such plan or program is being actively developed, formed or proposed by the **Organization** prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this coverage section for any **Claim** against an **Insured** in a settlor or similar uninsured capacity with respect to any plan or program; and
- (d) 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 **Organization** during the **Policy Period** (except as otherwise provided in Subsection 18 of this coverage section), or any multi-employer plan created before or during the **Policy Period**.

Wrongful Act means with respect to any **Plan**:

- (a) any breach of the responsibilities, obligations or duties imposed by **ERISA** upon fiduciaries of the **Sponsored Plan** committed, attempted, or allegedly committed or attempted by an **Insured** in the **Insured's** capacity as such;
 - (b) any negligent act, error or omission in the **Administration** of any **Plan** committed, attempted, or allegedly committed or attempted by an **Insured** in the **Insured's** capacity as such; or
 - (c) any other matter claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Sponsored Plan**.
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Exclusions

4. The Company shall not be liable for **Loss** on account of any **Claim** against an **Insured**:
- (a) based upon, arising from, or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, was the subject of any notice given under any policy or coverage section of which this coverage section is a direct or indirect renewal or replacement;
 - (b) based upon, arising from, or in consequence of any demand, suit, or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the applicable Pending or Prior Date set forth in Item 6 of the Declarations for this coverage section, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
 - (c) based upon, arising from, or in consequence of:
 - (i) any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any **Pollutants**; or
 - (ii) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request,
including but not limited to any **Claim** for financial loss to any **Organization** or **Plan** or creditors based upon, arising from, or in consequence of any matter described in clause (i) or clause (ii) of this Exclusion 4(c); provided that this Exclusion 4(c) shall not apply to (A) any **Claim** by or on behalf of a beneficiary of or participant in any **Sponsored Plan** based upon, arising from, or in consequence of the diminution in value of any securities owned by the **Sponsored Plan** in any organization other than the **Organization**, if such diminution in value is allegedly as a result of the matters described above in this Exclusion 4(c), or (B) **Loss** (other than fees and expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing **Pollutants**) incurred by an **Insured Person** for which the **Organization** is not permitted by common or statutory law to indemnify or for which the **Organization** is not able to indemnify by reason of **Financial Impairment**;
 - (d) based upon, arising from, or in consequence of bodily injury, mental anguish, emotional distress, humiliation, 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;
 - (e) based upon, arising from, or in consequence of the liability of any **Insured** under any contract or agreement; provided that this Exclusion 4(e) shall not apply to the extent that:
 - (i) an **Insured** would have been liable in the absence of such contract or agreement; or
 - (ii) such liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;



- (f) 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 (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (ii) the Health Insurance Portability and Accountability Act of 1996, or (iii) any amendments to or any rules or regulations promulgated under such Acts;
- (j) (g) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Fair Labor Standards Act), or amendments to or regulations promulgated under any such law, that governs wage, hour and payroll policies and practices ("Wage and Hour Laws"), including but not limited to:
 - (i) the calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other compensation alleged to be due and owing;
 - (ii) the classification of any organization or person for wage and hour purposes;
 - (iii) garnishments, withholdings or other deductions from wages;
 - (iv) child labor;
 - (v) pay equity or comparable worth; or
 - (vi) any similar policies or practices;
- (h) based upon, arising from, or in consequence of any **Wrongful Act** committed, attempted, or allegedly committed or attempted by a **Subsidiary** or an **Insured Person** of such **Subsidiary** during any time when such entity was not a **Subsidiary**;
- (i) based upon, arising from, or in consequence of any actual or alleged employment-related or work-related act, error, omission, misstatement, misleading statement, negligence, policy, practice, or breach of any responsibility, obligation or duty by, on behalf of, or with the consent of any **Insured**;
- (j) for any actual or alleged act, error, omission, misstatement, misleading statement, negligence, policy, practice, or breach of any responsibility, obligation or duty by, on behalf of, or with the consent of any **Insured Person** in his or her capacity as a director, officer, manager, trustee, fiduciary, regent, governor, employee, member of staff or faculty, administrator, general counsel, or member of a duly constituted committee of any entity other than an **Organization**;
- (k) based upon, arising from, or in consequence of any actual or alleged violation of any federal, state, or local securities law anywhere in the world (including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Act of 1940) or amendments to or regulations promulgated under any such laws;
- (l) for an accounting of profits made from the purchase or sale by such **Insured Person** of securities of the **Organization** within the meaning of Section 16(b) of the Securities Exchange Act of 1934, any amendments thereto, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world;



- (m) based upon, arising from, or in consequence of:
 - (i) the committing in fact of any dishonest or fraudulent act or omission or any willful violation of any statute or regulation by such **Insured**, as evidenced by (A) any written statement or written document by any **Insured**, (B) any plea of guilty, nolo contendere or no contest, or (C) any judgment or ruling in any judicial, administrative or alternative dispute resolution proceeding; or
 - (ii) such **Insured** having gained in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled;
- (n) for any actual or alleged violation of the responsibilities, obligations or duties imposed by:
 - (i) the Federal False Claims Act, the Social Security Act, any similar federal, state, or local statutory law or common law anywhere in the world or amendments to or regulations promulgated under any such law; or
 - (ii) any federal, state, or local anti-kickback, self-referral or healthcare fraud and abuse law anywhere in the world or amendments to or regulations promulgated under any such law,

brought by or on behalf of any federal, state, or local governmental, regulatory or administrative agency or entity, whether such **Claim** is brought in the name of such agency or entity or in the name of any other individual or entity; provided that this Exclusion 4(n) shall not apply to any **Claim** for any actual or alleged violation of Title II of the Health Insurance Portability and Accountability Act of 1996; or

- (o) based upon, arising from, or in consequence of any actual or alleged retaliatory treatment against an employee of an **Organization** on account of such individual:
 - (i) disclosing or threatening to disclose to any person, agency or entity alleged violations of;
 - (ii) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of; or
 - (iii) filing any **Claim** against an **Insured** under,

the Federal False Claims Act or the Social Security Act, any similar federal, state, or local statutory law or common law anywhere in the world, any federal, state, or local anti-kickback, self-referral or healthcare fraud and abuse law anywhere in the world, or amendments to or regulations promulgated under any such law.

- 5. The Company shall not be liable for **Loss**, other than **Defense Costs**:
 - (a) which constitutes the return or reversion to an employer of any contribution or asset of a **Plan**;
 - (b) which constitutes:
 - (i) benefits due or to become due under any **Plan**; or



- (ii) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, including but not limited to **Loss** resulting from the payment of plaintiff attorneys' fees based upon a percentage of such benefits or payable from a common fund established to pay such benefits,

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**; or
- (c) which is 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**.

Severability of Exclusions

- 6. (a) No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of applying the exclusion set forth in Subsection 4(m) of this coverage section.
- (b) Only facts pertaining to and knowledge possessed by any **Executive** of an **Organization** or **Plan** shall be imputed to such **Organization** or **Plan** for the purpose of applying the exclusion set forth in Subsection 4(m) of this coverage section.

Spouses, Estates and Legal Representatives

- 7. Subject otherwise to the General Terms and Conditions and the limitations, conditions, provisions and other terms of this coverage section, coverage shall extend to **Claims** for the **Wrongful Acts** of an **Insured Person** made against:
 - (a) the estate, heirs, legal representatives or assigns of such **Insured Person** if such **Insured Person** is deceased or the legal representatives or assigns of such **Insured Person** if such **Insured Person** is incompetent, insolvent or bankrupt; or
 - (b) the lawful spouse or **Domestic Partner** of such **Insured Person** solely by reason of such spouse or **Domestic Partner's** status as a spouse or **Domestic Partner**, or such spouse or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**.

All terms and conditions of this coverage section, including without limitation the Retention, applicable to **Loss** incurred by the **Insured Persons**, shall also apply to loss incurred by the estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of such **Insured Persons**. The coverage provided by this Subsection 7 shall not apply with respect to any loss arising from an act or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.



Extended Reporting Period

8. If the Company or the **Parent Organization** terminates or does not renew this coverage section, other than termination by the Company for nonpayment of premium, the **Parent Organization**, on behalf of all **Insureds**, shall have the sole right, upon payment of the additional premium set forth in Item 5(B) of the Declarations for this coverage section, to an extension of the coverage granted by this coverage section for **Claims** that are (i) first made during the period set forth in Item 5(A) of the Declarations for this coverage section (the "Extended Reporting Period") following the effective date of termination or nonrenewal, and (ii) reported to the Company in writing within the time provided in Subsection 10(a) of this coverage section, but only to the extent such **Claims** are for **Wrongful Acts** committed, attempted, or allegedly committed or attempted before the earlier of the effective date of termination or nonrenewal or the date of the first merger, consolidation, acquisition or **Financial Impairment** event described in Subsection 15 of this coverage section. The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew. The right to purchase an extension of coverage as described in this Subsection 8 shall lapse unless written notice of election to purchase the extension, together with payment of the additional premium due, is received by the Company within thirty (30) days after the effective date of termination or nonrenewal. Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**. The entire additional premium for the Extended Reporting Period shall be deemed fully earned at the inception of such Extended Reporting Period.

Limit of Liability and Retention

9. (a) The Company's maximum liability for all **Loss** on account of each **Fiduciary Claim** first made during the **Policy Period** and covered under Insuring Clause 1 shall be the Limit of Liability set forth in Item 3(A) of the Declarations for this coverage section. The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the **Policy Period**, whether covered under one or both Insuring Clauses, shall be the Limit of Liability set forth in Item 3(C) of the Declarations for this coverage section.
- (b) The Company's maximum aggregate liability for all **Defense Costs** and **Settlement Fees** on account of all **Settlement Program Notices** first given to the Company during the **Policy Period** and covered under Insuring Clause 2 shall be the Limit of Liability set forth in Item 3(B) of the Declarations for this coverage section, which amount shall be part of, and not in addition to, the Limit of Liability for each **Policy Period** set forth in Item 3(C) of the Declarations for this coverage section.
- (c) Solely in the event that the Optional Separate Defense Costs Coverage is purchased, as set forth in Item 2 of the Declarations for this coverage section, a separate, additional limit of liability shall be available for **Defense Costs** incurred in connection with **Fiduciary Claims** covered under Insuring Clause 1 ("Separate Defense Costs Limit"). The Company's maximum aggregate liability under the Separate Defense Costs Limit for all **Defense Costs** on account of all **Fiduciary Claims** first made during the **Policy Period** and covered under Insuring Clause 1 shall be the Limit of Liability set forth in Item 3(D) of the Declarations for this coverage section; provided that if such Limit of Liability is exhausted, any additional **Defense Costs** shall reduce and may exhaust the applicable Limits of Liability set forth in Items 3(A) and 3(C) of the Declarations for this coverage section. If the Optional Separate Defense Costs Coverage is not purchased, **Defense Costs** shall be part of, and not in addition to, the Limits of Liability set forth in Items 3(A) and 3(C)



of the Declarations for this coverage section, and the payment by the Company of **Defense Costs** shall reduce and may exhaust such applicable Limits of Liability.

- (d) No Retention shall apply to any **Loss** under this coverage section incurred by an **Insured Person** if such **Loss** can not be indemnified by an **Organization** or **Plan** because such **Organization** or **Plan** is either not legally permitted or required to indemnify, or is unable to indemnify, such **Insured Person** by reason of **Financial Impairment**. The Company's liability for all other covered **Loss** (as determined by Subsection 12 of this coverage section) shall apply only to that part of **Loss** on account of each **Claim** which is excess of the applicable Retention set forth in Item 4 of the Declarations for this coverage section. Such Retention shall be reduced only by **Loss** otherwise covered under this coverage section and shall be borne by the **Insureds** uninsured and at their own risk.
- (e) If different parts of a single **Claim** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (f) All **Related Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Related Claims** was first made, or on the date the earliest of such **Related Claims** is treated as having been made in accordance with Subsection 10(b) of this coverage section, regardless of whether such date is before or during the **Policy Period**.
- (g) The limit of liability available during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's maximum aggregate limit of liability for all **Loss** on account of all **Claims** first made during the immediately preceding **Policy Period**.

SPECIMEN

Reporting and Notice

- 10. (a) The **Insureds** shall, as a condition precedent to exercising any right to coverage under this coverage section, give to the Company written notice of any **Fiduciary Claim** as soon as practicable, but in no event later than the earliest of the following dates:
 - (i) if this coverage section expires (or is otherwise terminated) and if no Extended Reporting Period is purchased, sixty (60) days after the effective date of such expiration or termination; or
 - (ii) the expiration date of the Extended Reporting Period, if purchased;provided that if the Company sends written notice to the **Parent Organization**, at any time before the date set forth in (i) above with respect to any **Fiduciary Claim**, stating that this coverage section is being terminated for non-payment of premium, the **Insureds** shall give to the Company written notice of such **Fiduciary Claim** prior to the effective date of such termination.
- (b) If during the **Policy Period** an **Insured**:
 - (i) becomes aware of circumstances which could give rise to a **Fiduciary Claim** and gives written notice of such circumstances to the Company as soon as practicable thereafter but before the expiration or termination of this coverage section; or



- (ii) gives written notice to the Company of a **Settlement Program Notice**,

then any **Claim** subsequently arising from such circumstances referred to in (i) above or from the **Settlement Program Notice** referred to in (ii) above, shall be deemed to have been first made during the **Policy Period** in which such written notice described in (i) or (ii) above was first given by an **Insured** to the Company, provided any such subsequent **Claim** is reported to the Company as set forth in Subsection 10(a) above. With respect to any such subsequent **Claim**, no coverage under this coverage section shall apply to loss incurred prior to the date such subsequent **Claim** is actually made.

- (c) The **Insureds** shall, as a condition precedent to exercising any right to coverage under this coverage section, give to the Company every demand notice, summons, complaint, or other process received by an **Insured** or **Insured** representative and such information and cooperation as the Company may reasonably require, and shall include in any notice under Subsection 10(a) or (b) a description of the **Claim** or circumstances, the nature of any alleged **Wrongful Acts**, the nature of the alleged or potential damage, the names of all actual or potential claimants, the names of all actual or potential defendants, and the manner in which such **Insured** first became aware of the **Claim** or circumstances.

Defense and Settlement

11. (a) The Company shall have the right and duty to defend any **Claim** covered by this coverage section, even if any of the allegations in such **Claim** are groundless, false or fraudulent. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (b) The Company may make any investigation it deems necessary and may, with the consent of the **Insured**, make any settlement of any **Claim** it deems expedient. If any **Insured** withholds consent to any settlement acceptable to the claimant and the Company (a "Proposed Settlement"), the Company's liability for all **Loss**, including **Defense Costs**, from such **Claim** shall not exceed:
- (i) the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement of such **Claim**; plus
- (ii) seventy percent (70%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above, incurred in connection with such **Claim**; subject in all events to the applicable Retention and the available Limit of Liability for such **Claim**. The remaining thirty percent (30%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above shall be borne by the **Insured** uninsured and at its own risk, notwithstanding anything to the contrary contained in Subsection 12(a) of this coverage section.
- (c) The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's prior written consent. The Company shall not be liable for any settlement made, for any other element of **Loss** incurred, for any obligation assumed, or for any admission made by any **Insured** without the Company's prior written consent. Provided that the **Insureds** comply with



Subsection 11(d) below, the Company shall not unreasonably withhold any such consent.

- (d) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company may reasonably require and agree that in the event of a **Claim** the **Insureds** will do nothing that could prejudice the Company's position or its potential or actual rights of recovery.

Allocation

- 12. (a) If in any **Claim** the **Insureds** incur both **Loss** that is covered under this coverage section and loss that is not covered under this coverage section, either because such **Claim** includes both covered and non-covered matters or because such **Claim** is made against both **Insureds** and others, the **Insureds** and the Company shall allocate such amount between covered **Loss** and non-covered loss based on the relative legal and financial exposures of the parties to covered and non-covered matters and, in the event of a settlement in such **Claim**, based also on the relative benefits to the parties from such settlement. The Company shall not be liable under this coverage section for the portion of such amount allocated to non-covered loss.
- (b) If the **Insureds** and the Company cannot agree on an allocation of **Loss**:
 - (i) no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
 - (ii) the Company, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators.

Other Insurance

- 13. If any **Loss** under this coverage section is insured under any other valid insurance policy(ies), 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 applicable retention or deductible and limit of liability under 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 Limits of Liability provided in this coverage section. Any payment by **Insureds** of a retention or deductible under such other insurance shall not reduce, by the amount of such payment which would otherwise have been covered under this coverage section, the applicable Retention under this coverage section.



Changes in Exposure

Acquisition/Creation of Another Organization

14. If before or during the **Policy Period** any **Organization**:
- (a) acquires securities or rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
 - (b) acquires another organization by merger into or consolidation with an **Organization**, such that the **Organization** is the surviving entity,

such other organization and its **Insured Persons** and **Plans** shall be **Insureds** under this coverage section, but only with respect to **Wrongful Acts** committed, attempted, or allegedly committed or attempted by such **Insureds** after such acquisition or creation unless the Company agrees, after presentation of a complete application and all other appropriate information, to provide coverage by endorsement for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by such **Insureds** before such acquisition or creation.

If, at the time of any such acquisition or creation described above, the total assets of any such acquired organization or new **Subsidiary** exceed fifteen percent (15%) of the total assets of the **Parent Organization** (as reflected in the most recent audited consolidated financial statements of such organization and the **Parent Organization**, respectively, as of the date of such acquisition or creation), then the **Parent Organization** shall give written notice of such acquisition or creation to the Company as soon as practicable, but in no event later than sixty (60) days after the date of such acquisition or creation, together with such other information as the Company may require and shall pay any reasonable additional premium required by the Company. If the **Parent Organization** fails to give such notice within the time specified in the preceding sentence, or fails to pay the additional premium required by the Company, coverage for such acquired or created organization and its **Insureds** shall terminate with respect to **Claims** first made more than sixty (60) days after such acquisition or creation. Coverage for any acquired or created organization described in this paragraph, and for the **Insureds** of such organization, shall be subject to such additional or different terms, conditions and limitations of coverage as the Company in its sole discretion may require.

Acquisition by Another Organization/Financial Impairment

15. If:
- (a) the **Parent Organization** merges into or consolidates with another organization and the **Parent Organization** is not the surviving entity;
 - (b) another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of or to appoint directors, trustees or **Managers** of the **Parent Organization**, or acquires the right to control or direct the managerial decisions of the **Parent Organization**; or



- (c) **Financial Impairment** of the **Parent Organization** occurs,

then coverage under this coverage section shall continue until termination of this coverage section, but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by **Insureds** before such merger, consolidation, acquisition or **Financial Impairment**. Upon the occurrence of any event described in (a), (b) or (c) of this Subsection 15, the entire premium for this coverage section shall be deemed fully earned.

The **Parent Organization** shall give written notice of such merger, consolidation, acquisition or **Financial Impairment** to the Company as soon as practicable, but in no event later than sixty (60) days after the date of such merger, consolidation, acquisition or **Financial Impairment**, together with such other information as the Company may require. Upon receipt of such notice and information and at the request of the **Parent Organization**, the Company may provide to the **Parent Organization** a quotation for an extension of coverage (for such period as may be negotiated between the Company and the **Parent Organization**) with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by **Insureds** before such merger, consolidation, acquisition or **Financial Impairment**. Any coverage extension pursuant to such quotation shall be subject to such additional or different terms, conditions and limitations of coverage and payment of such additional premium, as the Company in its sole discretion may require. If the Company in its sole discretion agrees to provide coverage for such **Claims**, the additional premium specified by the Company must be paid to the Company in full before such coverage becomes effective.

Cessation of Subsidiary

16. In the event an organization ceases to be a **Subsidiary** before or during the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insureds** shall continue until termination of this coverage section, but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted while such organization was a **Subsidiary**.

Termination of Plan

17. If an **Organization** terminates a **Plan** before or after the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, coverage under this coverage section with respect to such terminated **Plan** and its **Insureds** shall continue until termination of this coverage section for those who were **Insureds** prior to or at the time of such **Plan** termination or who would have been **Insureds** at the time of such termination if this coverage section had then been in effect. Such continuation of coverage shall apply with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted prior to or after the date the **Plan** was terminated.

Creation or Acquisition of an ESOP

18. Notwithstanding anything in this coverage section to the contrary, if during the **Policy Period** the **Organization** creates or directly or indirectly acquires an employee stock ownership plan ("ESOP"), the **Organization** shall promptly give to the Company written notice thereof together with such other information requested by the Company. The Company shall, at the request of the **Organization**, provide to the **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. Unless the **Insureds** accept such quotation and pay such additional premium within thirty (30) days after receipt of the quotation, no coverage will be available under this coverage section for **Claims** based upon, arising from, or in consequence of such ESOP.

Representations and Severability

19. In issuing this coverage section the Company has relied upon the statements, representations and information in the **Application**. All of the **Insureds** acknowledge and agree that all such statements, representations and information (i) are true and accurate, (ii) were made or provided in order to induce the Company to issue this coverage section, and (iii) are material to the Company's acceptance of the risk to which this coverage section applies.

In the event that any of the statements, representations or information in the **Application** are not true and accurate, this coverage section shall be void with respect to (i) any **Insured** who knew the facts in the **Application** that were not truthfully and accurately disclosed (whether or not the **Insured** knew of such untruthful disclosure in the **Application**) or to whom knowledge of such facts is imputed, and (ii) any **Organization** to the extent it indemnifies an **Insured Person** who had knowledge of such facts or to whom knowledge of such facts is imputed, whether or not knowledge of such facts is also imputed to such **Organization**. For purposes of the preceding sentence, knowledge shall be imputed as follows:

- (a) the knowledge of any **Insured Person** who is a past, present or future chief financial officer, in-house general counsel, chief executive officer, president or chairperson, chief compliance officer, director of human resources, or medical director of any **Organization** shall be imputed to such **Organization** and its **Subsidiaries** and their respective **Plans**;
- (b) the knowledge of the person(s) who signed the **Application** for this coverage section shall be imputed to all of the **Insureds**; and
- (c) except as provided in (a) above, the knowledge of an **Insured Person** who did not sign the **Application** shall not be imputed to any other **Insured**.

Compliance With Applicable Trade Sanction Laws

20. This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit the Company from providing insurance.