

**THIS IS A CLAIMS MADE COVERAGE WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ ALL TERMS CAREFULLY.**

I. INSURING AGREEMENTS

A. The Company shall pay on behalf of the **Insured Loss** for any **Claim** first made during the **Policy Period**, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period, for a **Wrongful Act**.

B. The Company shall pay on behalf of the **Insured Settlement Fees** and **Defense Expenses** in an amount not to exceed one hundred thousand dollars (\$100,000) with respect to a **Settlement Program Notice**; provided, the Company shall pay no **Settlement Fees** to satisfy or settle any investigation or **Claim** about which any **Insured** first received notice prior to the Inception Date set forth in ITEM 2 of the Declarations or subsequent to the Expiration Date set forth in ITEM 2 of the Declarations or any effective date of cancellation. Such amount shall be subject to the applicable Retention set forth in ITEM 5 of the Declarations and shall be part of and not in addition to the applicable limit of liability set forth in ITEM 5 of the Declarations.

II. DEFINITIONS

Wherever appearing in this **Liability Coverage**, the following words and phrases appearing in bold type shall have the meanings set forth in this Section II. DEFINITIONS:

A. “**Administration**” means:

1. giving counsel, advice, or notice to **Employees**, participants, or beneficiaries with respect to **Employee Benefits**;
2. interpreting **Employee Benefits**;
3. handling records in connection with **Employee Benefits**; or
4. effecting enrollment, termination or cancellation of **Employees**, participants, or beneficiaries under an **Employee Benefits** program.

B. “**Claim**” means:

1. a written demand for monetary or non-monetary relief;
2. a civil proceeding commenced by service of a complaint or similar pleading;
3. a criminal proceeding commenced by filing of charges;
4. a formal administrative or regulatory proceeding commenced by filing of a notice of charges, formal investigative order, service of summons or similar document, including a fact-finding investigation by the Department of Labor or the Pension Benefit Guaranty Corporation;
5. an arbitration, mediation or similar alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding, with the Company’s written consent, such consent not to be unreasonably withheld; or
6. a written request to toll or waive a statute of limitations relating to a potential civil or administrative proceeding;

against an **Insured** for a **Wrongful Act**.

A **Claim** shall be deemed to be made on the earliest date such written notice thereof is received by an **Executive Officer**.

C. “**Employee**” means a natural person whose labor or service is engaged by and directed by the **Insured Organization** and:

1. who is on the payroll of the **Insured Organization**, including:

- a. any in-house general counsel of the **Insured Organization**; and
 - b. any other full-time, part-time, temporary and seasonal workers; or
2. who is a volunteer.

Leased workers and independent contractors are not **Employees**. The status of an individual as an **Employee** shall be determined as of the date of the alleged **Wrongful Act**.

D. “**Employee Benefits**” means benefits provided through an **Employee Benefit Plan**, and also includes benefits provided under workers’ compensation insurance, unemployment insurance, Social Security, disability insurance, and the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”) and amendments thereto.

E. “**Employee Benefit Plan**” means:

1. any **Welfare Plan** which was, is now, or becomes sponsored solely by the **Insured Organization** exclusively for the benefit of **Employees** of the **Insured Organization**;

2. any **Pension Plan**, other than an **Employee Stock Ownership Plan** or multiemployer plan (as defined by **ERISA**), which is sponsored solely by the **Insured Organization** exclusively for the benefit of **Employees** of the **Insured Organization** and which existed on or before the Inception Date set forth in ITEM 2 of the Declarations;

3. any group or group-type insurance program, including a Health Savings Account (HSA) program, that was, is now, or becomes sponsored solely by the **Insured Organization** exclusively for the benefit of **Employees** of the **Insured Organization** and meets the safe harbor conditions set forth in 29 C.F.R. 2510.3-1(j)(1);

4. any benefit plan that is not subject to Title I of **ERISA**, including any fringe benefit or excess benefit plan, that was, is now, or becomes sponsored solely by the **Insured Organization** exclusively for the benefit of **Employees** of the **Insured Organization**;

5. any **Pension Plan** for which coverage is provided pursuant to Section V. CONDITIONS B. ACQUISITION OR FORMATION OF EMPLOYEE BENEFIT PLAN OR SPONSORED ESOP of this **Liability Coverage**; or

6. any **Employee Stock Ownership Plan** or multiemployer plan (as defined by **ERISA**) if such plan is specifically scheduled as an **Employee Benefit Plan** in an endorsement to this **Liability Policy**.

F. “**Employee Stock Ownership Plan**” means any plan so defined in Section 407(d)(6)(A) of **ERISA**, or any similar or related federal, state or local law or regulation.

G. “**ERISA**” means the Employee Retirement Income Security Act of 1974, including amendments thereto and regulations promulgated thereunder.

H. “**ESOP Administration**” means:

1. giving notice to **Employees**, participants, or beneficiaries with respect to **Employee Stock Ownership Plan** benefits;

2. interpreting **Employee Stock Ownership Plan** benefits;

3. handling records in connection with **Employee Stock Ownership Plan** benefits; or

4. effecting enrollment, termination or cancellation of **Employees**, participants, or beneficiaries under an **Employee Stock Ownership Plan**.

I. “**Executive Officer**” means a member of the board of directors, officer, member of the board of trustees, natural person partner, principal, risk manager, **LLC Manager**, in-house general counsel of the **Insured Organization** or a functional equivalent thereof. **Executive Officer** also includes any trustee or administrator of any **Employee Benefit Plan** or **Sponsored ESOP**.

J. “**Insured**” means the **Insured Persons**, the **Insured Organization**, an **Employee Benefit Plan**, and a **Sponsored ESOP**.

K. “**Insured Organization**” means the **Named Insured** and any **Subsidiary**.

L. “**Insured Person**” means any natural person who was, is now or becomes:

1. a trustee, member of the board of directors, officer, **LLC Manager**, in-house general counsel, or **Employee** of the **Insured Organization** or an **Employee Benefit Plan**, while acting in his or her capacity as a fiduciary of an **Employee Benefit Plan** or as a person performing **Administration** for an **Employee Benefit Plan**; or

2. a trustee, member of the board of directors, officer, **LLC Manager**, in-house general counsel, or **Employee** of the **Insured Organization**, or of a **Sponsored ESOP**, while acting in his or her capacity as a person performing **ESOP Administration** for a **Sponsored ESOP**.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

M. “**Loss**” means **Defense Expenses** and money which an **Insured** is legally obligated to pay as a result of a **Claim**, including settlements; judgments; back and front pay; compensatory damages; punitive or exemplary damages or the multiple portion of any multiplied damage award if insurable under the applicable law most favorable to the insurability of punitive, exemplary, or multiplied damages; prejudgment and postjudgment interest; and legal fees and expenses awarded pursuant to a court order or judgment; and solely with respect to Section I. INSURING AGREEMENTS B. of this **Liability Coverage, Settlement Fees**. **Loss** shall not include:

1. civil or criminal fines (except **Settlement Fees** pursuant to Insuring Agreement B. and civil penalties under Sections 502(i) and 502(l) of **ERISA**); sanctions; liquidated damages; payroll or other taxes; or damages or types of relief deemed uninsurable under applicable law;

2. payment of medical, pension, severance, **Employee Stock Ownership Plan** benefits or **Employee Benefits** which are or may become due, except to the extent that such sums are payable as a personal obligation of an **Insured Person**, because of such **Insured Person’s Wrongful Act**; provided, that this exclusion shall not apply to the Company’s obligation to defend any **Claim**, if applicable, or to pay, advance or reimburse **Defense Expenses**, regarding a **Claim** seeking such benefits; or

3. any amount allocated to non-covered loss pursuant to Section III. CONDITIONS P. ALLOCATION of the Liability Coverage Terms and Conditions.

N. “**Pension Plan**” means any plan so defined in Section 3(2) of **ERISA** or any similar or related federal, state or local law or regulation.

O. “**Settlement Fees**” mean any fees, penalties or sanctions imposed by law under a **Settlement Program** that any **Insured** becomes legally obligated to pay as a result of a **Wrongful Act**. **Settlement Fees** shall not include any costs or expenses other than such fees, penalties or sanctions.

P. “**Settlement Program**” means any voluntary compliance resolution program or similar voluntary settlement program, administered by the Internal Revenue Service or Department of Labor of the United States, including, but not limited to, the Employee Plans Compliance Resolution System, the Self Correction Program, the Audit Closing Agreement Plan, the Delinquent Filer Voluntary Compliance program, and the Voluntary Fiduciary Correction program, entered into by the **Insured Organization**.

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

R. “**Sponsored ESOP**” means any **Employee Stock Ownership Plan** which is sponsored solely by the **Insured Organization** exclusively for the benefit of **Employees** of the **Insured Organization** and which existed on or before the Inception Date set forth in ITEM 2 of the Declarations; provided, that **Sponsored ESOP** shall not include any **Employee Stock Ownership Plan** specifically listed as an **Employee Benefit Plan** in an endorsement to this **Liability Policy**.

S. “**Subsidiary**” means:

1. any corporation, partnership or limited liability company organized under the laws of any state, in which, on or prior to the Inception Date set forth in ITEM 2 of the Declarations, the **Named Insured** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities or voting rights representing the right to vote for the election of, or to appoint such organization’s board of directors, board of trustees, board of managers or a functional equivalent thereof, or to exercise a majority control of the board of directors, board of trustees, board of managers or a functional equivalent thereof;

2. any corporation, partnership or limited liability company operated as a joint venture, in which, on or prior to the Inception Date set forth in ITEM 2 of the Declarations, the **Named Insured** owns, directly or through one or more **Subsidiaries**, exactly fifty percent (50%) of the issued and outstanding voting stock and which, pursuant to a written agreement with the owner(s) of the remaining issued and outstanding voting stock of such organization, the **Named Insured** solely controls the management and operation of such organization; or

3. subject to the provisions set forth in Section III. CONDITIONS L. ACQUISITIONS of the Liability Coverage Terms and Conditions, any organization that the **Insured Organization** acquires or forms during the **Policy Period** in which the **Named Insured** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities or voting rights representing the right to vote for the election of, or to appoint such organization's board of directors, board of trustees, board of managers, or a functional equivalent thereof, or to exercise a majority control of the board of directors, board of trustees, board of managers or a functional equivalent thereof.

T. "**Welfare Plan**" means any plan so defined in Section 3(1) of **ERISA** or any similar or related federal, state or local law or regulation.

U. "**Workplace Misconduct**" means:

1. any actual or alleged failure or refusal to hire or employ an applicant for employment with the **Insured Organization**;

2. any actual or alleged termination or constructive termination of an employment relationship with the **Insured Organization**;

3. any actual or alleged demotion of, refusal to train or promote an **Employee**;

4. any other act or omission by which an **Insured** allegedly treats one **Employee** differently from another in compensation, terms, conditions, opportunities or privileges of employment, including acts or practices taken for the purpose of or which have the impact of distinguishing among, limiting, segregating or classifying **Employees** or applicants for employment with the **Insured Organization** in their compensation terms, conditions, opportunities or privileges of employment on any of the following grounds: race, color, national origin, religion, creed, gender, sexual orientation, pregnancy, disability, medical condition, age, marital status, Vietnam Era Veteran status, military service, or any other legally protected category, status or characteristic established pursuant to federal, state or other law, regulation or ordinance, including but not limited to Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Americans With Disabilities Act or the Family Medical Leave Act;

5. any adverse employment action with regard to an **Employee** on account of such **Employee's** exercise or attempted exercise of rights protected by law, including but not limited to the Family Medical Leave Act, or on account of the **Employee** having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law; or

6. any actual or constructive termination of an employment relationship with the **Insured Organization** in a manner or for a reason which is contrary to applicable law or in violation of a written, oral or implied agreement, other than a collective bargaining agreement, for continued employment.

V. "**Wrongful Act**" means:

1. any actual or alleged breach of fiduciary duty by the **Insured** with respect to any **Employee Benefit Plan**, including but not limited to:

a. any actual or alleged breach of duties, obligations and responsibilities imposed by **ERISA** or by COBRA, or by any similar or related federal, state or local law or regulation, in the discharge of the **Insured's** duties with respect to an **Employee Benefit Plan**;

b. any actual or alleged negligent act, error or omission of the **Insured** in the **Administration of Employee Benefits**; and

c. any other matter claimed against an **Insured** solely because of the **Insured's** status as a fiduciary as respects an **Employee Benefit Plan**; or

2. any actual or alleged negligent act, error, or omission in the performance of, or failure to perform **ESOP Administration** by any **Insured** with respect to a **Sponsored ESOP**.

All **Related Wrongful Acts** are a single **Wrongful Act** for purposes of this **Liability Coverage**, and all **Related Wrongful Acts** shall be deemed to have occurred at the time the first of such **Related Wrongful Acts** occurred whether prior to or during the **Policy Period**.

III. EXCLUSIONS

A. This **Liability Coverage** shall not apply to, and the Company shall have no duty to defend or to pay, advance or reimburse **Defense Expenses** for, any **Claim**:

1. for any actual or alleged damage to, or destruction of, loss of, or loss of use of, any tangible property including without limitation inadequate or insufficient protection from soil or ground water movement, soil subsidence, mold, toxic mold, spores, mildew, fungus, or wet or dry rot;

2. for any actual or alleged bodily injury, sickness, disease, death, loss of consortium, emotional distress, mental anguish, humiliation, or invasion of privacy of any person;

3. based upon, alleging, arising out of, or in any way relating to, directly or indirectly, any **Pollution**; provided, this exclusion shall not apply to any **Claim** by or on behalf of a beneficiary of or participant in any **Employee Benefit Plan** based upon, arising from or in consequence of the diminution in value of any securities owned by the **Employee Benefit Plan** in any organization, other than the **Insured Organization**, if such diminution in value is allegedly as a result of actual or alleged **Pollution**;

4. for any actual or alleged liability of others assumed by an **Insured** under any contract or agreement, whether oral or written, other than an **Employee Benefit Plan** or **Sponsored ESOP**, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;

5. for any actual or alleged violation of responsibilities, duties or obligations under any law concerning Social Security, unemployment insurance, workers' compensation, disability insurance, or any similar or related federal, state or local law or regulation, or for any actual or alleged violation of the Worker Adjustment and Retraining Notification Act (WARN), Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), Fair Labor Standards Act (FLSA), or amendments thereto or regulations promulgated thereunder, or any similar or related federal, state or local law or regulation; other than COBRA;

6. based upon, alleging, arising out of, or in any way relating to, directly or indirectly, any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior or pending civil, criminal, administrative or regulatory proceeding against any **Insured** as of the applicable Prior and Pending Proceeding Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**;

7. for or arising out of facts, transactions or events which are or reasonably would be regarded as a **Wrongful Act**, about which any **Executive Officer** had knowledge prior to the applicable Continuity Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**;

8. based upon, alleging, arising out of, or in any way relating to, directly or indirectly, any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date set forth in ITEM 2 of the Declarations, was the subject of any notice of claim or potential claim given by or on behalf of any **Insured** under any policy of insurance of which this **Liability Coverage** is a direct or indirect renewal or replacement;

9. based upon, alleging, arising out of, or in any way relating to, directly or indirectly, any **Wrongful Act** by a **Subsidiary** or any related **Insured Person** occurring at any time during which such entity was not a **Subsidiary**;

10. based upon, alleging, arising out of, or in any way relating to, directly or indirectly, any **Workplace Misconduct**, other than **Claims** asserted under Section 510 of **ERISA**; or

11. based upon, alleging, arising out of, or in any way relating to, directly or indirectly, any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance, or the hazardous properties of nuclear material; or infectious waste or medical waste.

B. The Company shall have no duty to pay **Loss**, other than **Defense Expenses**, for any **Claim**:

1. based upon, arising out of, or in any way relating to, directly or indirectly, any **Insured**:

- a. committing any intentionally dishonest or fraudulent act or omission;
- b. any willful violation of any statute, rule, law; or
- c. gaining in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled;

provided, that Exclusions B.1.a. and B.1.b. shall not apply unless a judgment or other final adjudication establishes that such **Insured** committed such intentionally dishonest or fraudulent act or omission, or willful violation of any statute, rule or law; or

2. seeking costs and expenses incurred or to be incurred to comply with an order, judgment or award of injunctive or other equitable relief of any kind, or that portion of a settlement encompassing injunctive or other equitable relief, including but not limited to actual or anticipated costs and expenses associated with or arising from an **Insured's** obligation to provide reasonable accommodation under, or otherwise comply with, the Americans With Disabilities Act or the Rehabilitation Act of 1973, including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state or local law or regulation.

IV. SEVERABILITY OF EXCLUSIONS

No conduct of any **Insured** shall be imputed to any other **Insured** to determine the application of any of the Exclusions set forth in Section III. EXCLUSIONS above.

V. CONDITIONS

A. SETTLEMENT

The Company may, with the written consent of the **Insured**, make such settlement or compromise of any **Claim** as the Company deems expedient. In the event that the Company recommends an offer of settlement of any **Claim** which is acceptable to the claimant(s) (a "Settlement Offer"), and if the **Insured** shall refuse to consent to such Settlement Offer, the **Insured** shall be solely responsible for thirty percent (30%) of all **Defense Expenses** incurred or paid by the **Insured** after the date the **Insured** refused to consent to the Settlement Offer, and the **Insured** shall also be responsible for thirty percent (30%) of all **Loss**, other than **Defense Expenses**, in excess of the Settlement Offer, provided that the Company's liability under this **Liability Coverage** for such **Claim** shall not exceed the remaining applicable limit of liability.

B. ACQUISITION OR FORMATION OF EMPLOYEE BENEFIT PLAN OR SPONSORED ESOP

If, during the **Policy Period**, the **Insured Organization** acquires or forms a **Sponsored ESOP** or **Employee Benefit Plan** (other than an **Employee Stock Ownership Plan**, unless specifically scheduled as an **Employee Benefit Plan** by endorsement to this **Liability Policy**) which is then solely sponsored by the **Insured Organization** exclusively for the benefit of the **Employees** of the **Insured Organization**, this **Liability Coverage** will provide coverage for that acquired or formed **Sponsored ESOP** or **Employee Benefit Plan** and its respective **Insured Persons**, subject to all other terms and conditions of this **Liability Coverage**, but only for **Claims** for **Wrongful Acts** which occur wholly during the time that the **Insured Organization** is sole sponsor with regard to the **Sponsored ESOP** or **Employee Benefit Plan**, provided written notice of such acquisition or formation has been given to the Company, and specific application has been submitted on the Company's form in use at the time, together with such documentation and information as the Company's underwriters may require, all within ninety (90) days after the effective date of such acquisition or formation. Coverage for the acquired or formed **Sponsored ESOP** or **Employee Benefit Plan** shall not be afforded following such 90-day period unless the Company has agreed to provide such coverage, subject to any additional terms and conditions as the Company may require, and the **Named Insured** has paid the Company any additional premium as may be required by the Company.

The 90-day notice requirement shall not apply, provided that: (1) the total assets of the acquired or formed **Sponsored ESOP** or **Employee Benefit Plan**, as of the effective date of such acquisition or formation, do not exceed twenty-five percent (25%) of the total plan assets shown on the most recent application submitted by the **Insured Organization**, or (2) the acquisition or formation occurs less than ninety (90) days prior to the end of the **Policy Period**.

C. MERGER OF PLANS

If, during the **Policy Period**, an **Employee Benefit Plan** is merged with another **Employee Benefit Plan**, this **Liability Coverage** shall continue to provide coverage for both plans, subject to all other terms and conditions of this **Liability Coverage** and only for so long as this **Liability Coverage** remains in effect as to the **Named Insured**.

If, during the **Policy Period**, a **Sponsored ESOP** is merged with another **Sponsored ESOP**, this **Liability Coverage** shall continue to provide coverage for both plans, subject to all other terms and conditions of this **Liability Coverage** and only for so long as this **Liability Coverage** remains in effect as to the **Named Insured**.

If, during the **Policy Period**, an **Employee Benefit Plan** or **Sponsored ESOP** (“Covered Plan”) is merged with another **Welfare Plan** or **Pension Plan** for which coverage is not provided under this **Liability Coverage** (“Uncovered Plan”), this **Liability Coverage** shall continue to provide coverage for only the Covered Plan, subject to all other terms and conditions of this **Liability Coverage** and only for so long as this **Liability Coverage** remains in effect as to the **Named Insured**, but only for **Claims** for **Wrongful Acts** which occurred prior to the date of such merger.

D. SALE OF PLAN

If, prior to or during the **Policy Period**, any **Employee Benefit Plan** or **Sponsored ESOP** is sold, this **Liability Coverage** shall provide coverage for such plan, subject to all other terms, conditions and limitations of this **Liability Coverage** and only for so long as this **Liability Coverage** remains in effect as to the **Named Insured**. The coverage provided pursuant to this Section V.

CONDITIONS D. SALE OF PLAN shall apply only:

1. for **Claims** for **Wrongful Acts** which occurred prior to the date of such sale;
2. while such plan was sponsored solely by the **Insured Organization** exclusively for the benefit of employees of the **Insured Organization**; and
3. if notice of such sale is given to the Company prior to the end of such **Policy Period**.

E. OTHER INSURANCE

This **Liability Coverage** shall apply only as excess insurance over, and shall not contribute with any other valid and collectible insurance available to the **Insured**, including but not limited to any insurance under which there is a duty to defend, unless such insurance is written specifically excess of this **Liability Coverage** by reference in such other policy to the Policy Number of this **Liability Policy**. This **Liability Coverage** shall not be subject to the terms of any other insurance.