

FIDUCIARY LIABILITY COVERAGE PART

**THIS IS A CLAIMS-MADE POLICY
WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ THE ENTIRE POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (the "Insurer"), including the statements made in the **Proposal Form**, and subject to all terms, conditions and limitations of this Policy, the **Insureds** and the Insurer agree:

Section I. Insuring Agreements

- A.** The Insurer will pay to or on behalf of the **Insureds Damages** and **Costs of Defense** which the **Insureds** are legally obligated to pay as a result of a **Claim** first made against them during the **Policy Period** or the Discovery Period, if purchased, for a **Wrongful Act** by the **Insureds** or by any person or entity for whose **Wrongful Acts** the **Insureds** are or are alleged to be legally responsible.
- B.** If it is stated in ITEM 4 of the Declarations that the Optional Settlement Program Coverage under this Coverage Part has been purchased, the Insurer will pay to or on behalf of the **Insureds** those **Settlement Program Expenditures** incurred by the **Insureds** as a result of correcting an **Insured's** unintentional noncompliance with any federal statute, rule or regulation applicable to a **Plan**, but only if such unintentional noncompliance first becomes known to the **Insureds** during the **Policy Period** or the Discovery Period, if purchased.

Section II. Definitions

- A.** "**Administration**" will mean giving advice to participants and beneficiaries with respect to any **Plan**, interpreting any **Plan**, handling records in connection with any **Plan**, or effecting enrollment, termination or cancellation of participants under any **Plan**.
- B.** For purposes of this Coverage Part, the term "**Claim**" will include a written notice received by an **Insured** from the Department of Labor or the Pension Benefit Guaranty Corporation of the commencement of an investigation.
- C.** "**Damages**" will mean monetary damages (including punitive or exemplary damages and the multiple portion of any multiple damage award if and to the extent that such damages are insurable under the law of that jurisdiction applicable to the **Claim** giving rise to such damages that is most favorable to the insurability thereof), judgments (including pre- and post-judgment interest, if any) or settlements which an **Insured** is legally obligated to pay as a result of a **Claim**; provided, that **Damages** will not include any fines, taxes or penalties other than:
1. civil penalties or excise tax imposed pursuant to Section 502(c) of the Employee Retirement Income Security Act of 1974 ("ERISA") and the Pension Protection Act of 2006;
 2. civil penalties of up to five percent (5%) imposed pursuant to Section 502(i) of ERISA;
 3. civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty; and
 4. civil fines and penalties imposed pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
- D.** For purposes of this Coverage Part, the term "**Insured**" will mean:
1. any **Plan**;

2. the **Company**;
3. the **Insured Persons**; and
4. any other entity or natural person designated as an additional **Insured** by written endorsement to this Coverage Part.

E. For purposes of this Coverage Part, the term "**Insured Person**" will mean:

1. with respect to any **Plan** or entity included within the term "**Company**," any natural person who at any time holds or shall have held the position of director, officer, trustee, governor, management committee member, in-house general counsel or employee thereof;
2. with respect to any entity included within the term "**Company**" that is a limited liability company, any natural person who at any time holds or shall have held the position of manager, member of the Board of Managers or equivalent executive thereof;
3. with respect to any entity included within the term "**Company**" that is a partnership, any natural person who at any time holds or shall have held the position of general partner thereof; and
4. with respect to any entity included within the term "**Company**" organized or chartered in any jurisdiction other than the United States, any natural person who at any time holds or shall have held any position equivalent to any position described in Section II.E.1, 2 or 3 above.

F. For purposes of this Coverage Part, the term "**Loss**" will mean **Damages, Costs of Defense** and, if it is stated in ITEM 4 of the Declarations that the Optional Settlement Program Coverage under this Coverage Part has been purchased, **Settlement Program Expenditures**; provided, that the term "**Loss**" will not include:

1. salaries, wages, overhead or benefit expenses associated with any **Insured**; or
2. any matter which may be deemed uninsurable under the law pursuant to which this Coverage Part is construed.

G. "**Pension Benefit Plan**" will mean any employee pension benefit plan, as defined in Section 3 of ERISA.

H. "**Plan**" will mean:

1. any **Pension Benefit Plan** or **Welfare Benefit Plan** which is operated solely by the **Company** or jointly by the **Company** and a labor organization solely for the benefit of the **Company's** directors, officers, trustees, governors, management committee members, managers, members of the Board of Managers, general partners, in-house general counsel or employees located anywhere in the world;
2. any other employee benefit plan or program anywhere in the world which is not subject to ERISA and which is sponsored by the **Company** solely for the benefit of its directors, officers, trustees, governors, management committee members, managers, members of the Board of Managers, general partners, in-house general counsel or employees, including but not limited to any cafeteria plan, dependent care assistance program, fringe benefit plan, deferred compensation plan, supplemental executive retirement plan, top-hat plan, excess benefit plan or voluntary employees' beneficiary association;
3. any other plan or program otherwise described in Section II.H.1 or 2 above while such plan or program is being actively developed, formed or proposed by the **Company** prior to the formal creation of such plan or program; provided, that no coverage will be afforded under this Coverage Part in respect of any **Claim** against any **Insured** in a settlor or similar uninsured capacity with respect to any such plan or program; and

4. any other plan, fund or program specifically identified as a **Plan** by written endorsement attached to and made a part of this Coverage Part.

However, **Plan** will not include any multi-employee plan as that term is defined by ERISA.

- I. "**Settlement Program**" will mean 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.
- J. "**Settlement Program Expenditures**" will mean:
 1. reasonable costs, charges and expenses of attorneys, accountants and/or other professionals that are incurred solely in investigating and evaluating a **Plan's** unintentional noncompliance with any federal statute, rule or regulation applicable to such **Plan** and effecting a resolution thereof pursuant to a **Settlement Program**; and
 2. any fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** as a result of a **Plan's** unintentional noncompliance with any federal statute, rule or regulation applicable to such **Plan** and, subject to the Insurer's approval, costs to correct a **Plan's** unintentional noncompliance with any federal statute, rule or regulation applicable to such **Plan** that are incurred by the **Plan** in connection with its participation in a **Settlement Program**.
- K. "**Welfare Benefit Plan**" will mean any employee welfare benefit plan, as such term is defined in Section 3 of ERISA.
- L. For purposes of this Coverage Part, the term "**Wrongful Act**" will mean:
 1. any actual or alleged breach of the responsibilities, obligations or duties imposed upon fiduciaries of a **Plan** by ERISA, HIPAA, the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), any amendments to any of the foregoing, the common or statutory law of any jurisdiction, domestic or foreign, governing such **Plan**, or any rules or regulations promulgated under any of the foregoing;
 2. any violation of HIPAA claimed against any **Insured** due solely to such **Insured's** service as fiduciary of any **Plan**;
 3. any negligent act, error or omission by any **Insured** in the **Administration** of any **Plan**;
 4. any other matter claimed against an **Insured Person** due solely to such **Insured Person's** service as fiduciary of any **Plan**.

Section III. Exclusions

- A. The Insurer will not be liable under this Coverage Part to make any payment of **Loss**, including **Costs of Defense**, in connection with any **Claim** made against any **Insured**:
 1. based upon, arising from or in consequence of any dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law by such **Insured**, or by the gaining in fact by such **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled, if such dishonest, fraudulent or criminal act or omission, willful violation of statute, rule or law or the gaining in fact of such profit, remuneration or advantage shall have been established by a judgment or other final adjudication adverse to such **Insured**;

2. for any actual or alleged:
 - a. bodily injury, sickness, disease or death of any person, mental anguish, emotional distress, invasion of privacy, trespass, nuisance, wrongful entry or eviction, assault, battery, loss of consortium, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, defamation or slander; or
 - b. damage to or destruction of any tangible property, including the loss of use thereof;
3. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission or contamination of any kind; including but not limited to any financial loss to any **Insured** or any beneficiaries, security holders or creditors thereof based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any matter described in this exclusion;
4. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged negligent act, error or omission in the **Administration** of, or failure to comply with any law concerning, workers' compensation, unemployment insurance, Social Security or disability benefits, any amendments thereto, any similar provisions of any federal, state or local statutory or common law anywhere in the world or any rules or regulations promulgated under any of the foregoing, whether or not such failure to comply is willful; provided, that this exclusion will not apply to any actual or alleged failure by any **Insured** to comply with any provision of COBRA, HIPAA, any amendments thereto or any rules or regulations promulgated thereunder;
5. based upon, arising from or in consequence of any liability of others assumed by any **Insured** under any contract or agreement, whether oral or written, other than an agreement or declaration of trust or similar agreement creating or establishing a **Plan**; provided, that this exclusion will not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement; or
6. based upon, arising from or in consequence of:
 - a. any act, error, omission, fact, circumstance, situation, transaction, event, decision, **Wrongful Act or Related Wrongful Act** which has been the subject of any notice given under any policy of which this Coverage Part is a renewal or replacement, or
 - b. any prior and/or pending civil, criminal, administrative or investigative proceeding involving any **Insured** as of the Prior and Pending Date stated in ITEM 7 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding.

B. The Insurer will not be liable under this Coverage Part to make any payment of **Damages**:

1. which constitute the return to any employer of any contributions if such amounts are or could be chargeable to a **Plan**;
2. which constitute benefits due or to become due under the terms of any **Plan** or which would be due under any **Plan** if such **Plan** were in compliance with all applicable law, except and then only if and to the extent that recovery for such benefits is based on a **Wrongful Act** by an **Insured Person** and is payable solely as the personal obligation of such **Insured Person**; or
3. based upon, arising from or in any way related to a failure to fund, or to collect contributions owed to, any **Plan**;

provided, that this Section III.B will not limit any right and duty on the part of the Insurer to defend any such **Claim** or the Insurer's obligation to pay **Costs of Defense** in connection therewith.

- C. The Insurer will not be liable under the Optional Settlement Program Coverage under this Coverage Part, if purchased, to make any payment of fees, fines, penalties or sanctions relating to a **Plan** if, as of the earlier of the inception date of this Policy as stated in ITEM 2 of the Declarations or the inception date of any policy of insurance issued by the Insurer of which this Coverage Part is a renewal or replacement, any **Insured Person** knew of the actual or alleged noncompliance of such **Plan** with any statute, rule or regulation in respect of which such fees, fines, penalties or sanctions are owed.
- D. No **Wrongful Act** of any **Insured** will be imputed to any other **Insured** to determine the application of any of the above exclusions.

Section IV. Waiver of Retention

No retention will apply under this Coverage Part to **Loss**, including **Costs of Defense**, incurred by the **Insured Persons** if advancement or indemnification of such **Loss** by the **Company** is neither required nor permitted under applicable law or, if advancement or indemnification of such **Loss** by the **Company** is required or permitted under applicable law, such advancement or indemnification is not made solely by reason of the **Company's Financial Insolvency**.

Section V. Sub-Limit of Liability and Retention Applicable to Settlement Program Expenditures

If it is stated in ITEM 4 of the Declarations that the Optional Settlement Program Coverage under this Coverage Part has been purchased:

- A. The Insurer's maximum aggregate limit of liability for **Settlement Program Expenditures** will be the amount set forth in ITEM 5.c.i of the Declarations, which amount will be part of, and not in addition to, the Insurer's maximum aggregate limit of liability for all **Loss** under this Coverage Part as set forth in ITEM 5.c of the Declarations.
- B. No retention amount will apply to **Settlement Program Expenditures** payable under this Coverage Part.

Section VI. Discovery Period

If it is stated in ITEM 4 of the Declarations that the Optional Settlement Program Coverage under this Coverage Part has been purchased and the **Insureds** purchase a Discovery Period pursuant to Section III.A of the GENERAL TERMS AND CONDITIONS of this Policy, such Discovery Period will also provide coverage for **Settlement Program Expenditures** incurred by **Insureds** as a result of the **Insureds'** participation during the Discovery Period in a **Settlement Program**, but only if such participation commences during the Discovery Period and involves a **Plan's** unintentional noncompliance with any federal statute, rule or regulation applicable to such **Plan** actually or allegedly taking place before the effective date of the Policy's termination or non-renewal. The Insurer's limit of liability for **Settlement Program Expenditures** incurred by **Insureds** as a result of the **Insureds'** participation during the Discovery Period in a **Settlement Program** will be part of, and not in addition to, the Insurer's maximum aggregate limit of liability for all **Settlement Program Expenditures** under this Coverage Part, which, in turn, will be part of, and not in addition to, the Insurer's maximum aggregate limit of liability for all **Loss** under this Coverage Part.

Section VII. Notice

If it is stated in ITEM 4 of the Declarations that the Optional Settlement Program Coverage under this Coverage Part has been purchased, then, as a condition precedent to exercising their rights under INSURING AGREEMENT B of this Coverage Part, the **Insureds** must give the Insurer written notice of their participation or intent to participate in a **Settlement Program** as soon as practicable after the **Insureds** first become aware of any unintentional noncompliance with any federal statute, rule or regulation applicable to any **Plan**, but in no event later than the expiration date of the Policy. The Insurer will not be liable under INSURING AGREEMENT B for any **Settlement Program Expenditures** incurred in connection with any **Settlement Program** before such written notice has been given to the Insurer.

Section VIII. Changes in Exposure

- A. If, during the **Policy Period**, a **Plan** merges into or consolidates with another trust or plan not included within the term "**Plan**" such that such **Plan** is not the surviving entity, written notice thereof must be provided to the Insurer as soon as practicable. Coverage under this Coverage Part will continue in full force and effect with respect to **Claims** for **Wrongful Acts** with respect to such **Plan** committed, attempted or allegedly committed or attempted before such event by any **Insured** or by any person or entity for whose **Wrongful Acts** the **Insureds** are legally responsible, and for the **Insureds'** participation in **Settlement Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation before such event. However, coverage under this Coverage Part will cease with respect to **Claims** for **Wrongful Acts** with respect to such **Plan** committed, attempted or allegedly committed or attempted after such event by any **Insured** or by any person or entity for whose **Wrongful Acts** any **Insured** is legally responsible and for the **Insureds'** participation in **Settlement Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation after such event.
- B. If, during the **Policy Period**, the responsibility for the administration of a **Plan** is fully assumed by another person, entity or group of persons or entities, written notice thereof must be provided to the Insurer as soon as practicable. Coverage under this Coverage Part will continue in full force and effect with respect to **Claims** for **Wrongful Acts** with respect to such **Plan** committed, attempted or allegedly committed or attempted before such event by any natural person **Insured** prior to such transfer of responsibilities or by any person or entity for whose **Wrongful Acts** any natural person **Insured** is legally responsible, and for such natural person **Insureds'** participation in **Settlement Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation before such event. However, coverage under this Coverage Part will cease with respect to **Claims** for **Wrongful Acts** with respect to such **Plan** committed, attempted or allegedly committed or attempted after such event by any natural person **Insured** or by any person or entity for whose **Wrongful Acts** any natural person **Insured** is legally responsible, and for such natural person **Insureds'** participation in **Settlement Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation after such event.
- C. If, during the **Policy Period**, the **Company** acquires the assets of another entity or acquires a **Subsidiary** or any other entity, by merger, acquisition or otherwise, no coverage will be available under this Coverage Part in respect of any **Pension Benefit Plan** of any such entity or any trust established to hold any assets of such **Pension Benefit Plan** or any **Insureds** with respect to any such **Pension Benefit Plan** or trust unless written notice of such acquisition is given to the Insurer, together with such additional information as the Insurer may request, as soon as practicable after the effective date and time of such acquisition and the Insurer agrees by written endorsement to this Coverage Part to provide such coverage on such terms, conditions and limitations, and for such additional premium, as the Insurer may require.

Section IX. Waiver of Right of Recourse

If any premium for this Coverage Part is paid out of the assets of a **Plan**, the Insurer will have the right of recourse required by Section 410(b)(1) of ERISA, unless an **Insured** other than a **Plan** shall have paid the additional Waiver of Recourse Premium set forth in ITEM 9 of the Declarations.

Section X. No Fiduciary Status for Insurer

Nothing in this Coverage Part is intended, nor should it be construed:

- A. to give or allow the Insurer to exercise any authority or control respecting the management of any **Plan**, any authority or control respecting the management or disposition of any **Plan's** assets, or any authority or responsibility in the **Administration** of any **Plan**;
- B. to create any legal relationship between the Insurer and any beneficiary of or participant in any **Plan** or any obligation on the part of the Insurer to make any payment or reimbursement directly to any beneficiary of or participant in any **Plan**; or
- C. to cause the Insurer to be treated as a fiduciary, as defined in Section (3)(21) of ERISA, with respect to any **Plan**.