

## FIDUCIARY LIABILITY COVERAGE PART

### I. INSURING AGREEMENTS

#### (A) Fiduciary Liability

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

#### (B) Settlement Programs (Elective)

If Settlement Program Coverage is included in Item 5 of the Declarations, the Insurer shall pay **Settlement Fees** on behalf of the **Insureds** resulting from a **Settlement Program** for which a **Settlement Program Notice** is received by the Insurer during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insureds**.

This Insuring Agreement shall be subject to a Sublimit of Liability of \$100,000. Such a Sublimit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Agreement for all **Loss** from all **Claims** covered under this Insuring Agreement. Such Sublimit of Liability shall be subject to, part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**. This Insuring Agreement shall also be subject to the Settlement Program Coverage Retention and Prior or Pending Date in Item 5 of the Declarations.

### II. DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

#### (A) "Claim" means any:

- (1) **Fiduciary Claim**; or
- (2) **Settlement Program Notice**.

#### (B) "Employee Stock Ownership Plan" means any **Insured Plan** that invests more than 10% of its assets in securities of **Insured Entities**.

#### (C) "Fiduciary Claim" means any:

- (1) written demand for civil damages or other civil relief commenced by the receipt of such demand, including a demand to toll the running of a statute of limitations; or
- (2) civil proceeding, including a civil administrative or regulatory proceeding, or an arbitration or other alternative dispute proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading; or
- (3) civil administrative or regulatory proceeding commenced by the filing or service of a notice of charges or an investigation by the Department of Labor or Pension Benefit Guaranty Corporation.

However, **Fiduciary Claim** shall not include any investigation other than those qualifying as

such under section II.(C) (3) herein.

(D) “**Insured Person**” means any:

- (1) **Manager**; or
- (2) **Employee**.

(E) “**Insured Plan**” means any past, present, or future:

- (1) employee welfare benefit plan or employee pension benefit plan, as defined in **ERISA**, sponsored solely by an **Insured Entity**, or jointly by an **Insured Entity** and a labor organization, for the benefit of **Employees** only;
- (2) employee benefit plan, including an excess benefit plan, not subject to Title 1 of **ERISA**, sponsored solely by an **Insured Entity** for the benefit of **Employees** only;
- (3) government-mandated insurance program for unemployment, social security or disability benefits for **Employees** other than workers compensation; or
- (4) any other plan, fund, or program specifically included as an **Insured Plan** in a written endorsement issued by the Insurer to form a part of this Policy.

Notwithstanding the above, an **Insured Plan** shall not include any:

- i. **Employee Stock Ownership Plan**; or
- ii. any multi-employer plan.

(F) “**Insured(s)**” means any:

- (1) **Insured Entity**;
- (2) **Insured Person**; or
- (3) **Insured Plan**.

(G) “**Loss**” means the amount that the **Insureds** are legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including **Defense Costs**, compensatory damages, settlements amounts, pre- and post-judgment interest, and costs awarded pursuant to judgments.

**Loss** also includes punitive and exemplary damages and the multiple portion of any multiplied damage award where insurable by law. With respect to punitive, exemplary, multiple portion of any multiplied damage award, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages.

However, **Loss** shall not include:

- (1) taxes, fines or penalties imposed by law; provided, however, the foregoing shall not apply to:

- (a) **Settlement Fees**, provided that Settlement Program Coverage is elected;
- (b) civil penalties of up to 5% imposed upon the **Insureds** pursuant to **ERISA** Section 502(i) or up to 20% imposed pursuant to **ERISA** Section 502(l); or
- (c) civil penalties imposed upon the **Insureds** under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Coverage for such civil penalties referred to in this subparagraph (G)(1)(c) is conditioned upon the following: (i) payment of such **Loss** shall be subject to the sub-limit of liability specified in Item 5 of the Declarations and (ii) such sub-limit of liability shall be part of, and not in addition to, the Aggregate Limit of Liability for this **Liability Coverage Part** shown on the Declarations;
- (2) non-monetary relief; and
- (3) any other matters uninsurable pursuant to any applicable law, including, but not limited to, disgorgement, restitution or the return of any ill-gotten gains.
- (H) **“Settlement Fees”** mean any fees, penalties or sanctions imposed by law under a **Settlement Program** that any **Insureds** become legally obligated to pay as a result of a **Wrongful Act**. **Settlement Fees** shall not include costs of corrections, other than fees or penalties.
- (I) **“Settlement Program”** means any voluntary compliance resolution program or similar voluntary settlement program administered by the United States of America Internal Revenue Service or any other governmental body that is entered into by an **Insured Entity**.
- (J) **“Settlement Program Notice”** means a prior written notice to the Insurer by any **Insured Entity** of its intent to enter into a **Settlement Program** that includes a detailed description of the **Wrongful Act** for which notice will be given under the **Settlement Program**.
- (K) **“Wrongful Act”** means any actual or alleged:
- (1) error, misstatement, misleading statement, act, omission, neglect or breach of duty constituting a violation of any responsibilities, obligations or duties imposed upon fiduciaries of an **Insured Plan** by **ERISA** or any similar law;
- (2) breach of the responsibilities, obligations or duties imposed upon an **Insured** by HIPAA in connection with an **Insured Plan**;
- (3) error, misstatement, misleading statement, act, omission, neglect or breach of duty in counseling, providing interpretations, handling records, or effecting enrollment, termination or cancellation of **Employees**, participants, or beneficiaries under an **Insured Plan**; or
- (4) matter claimed against an **Insured** solely due to such **Insured** acting in the capacity of a fiduciary of an **Insured Plan**.

### III. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

- (A) The Insurer shall not pay **Loss**:
- (1) for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person, or damage to or destruction of any tangible property, including loss of use or diminution of value thereof;

- (2) in connection with any **Claim** based upon, arising from, or in any way related to any prior or pending demand, suit or proceeding against any **Insureds** as of the applicable Prior or Pending Date in Item 5 of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand, suit or proceeding;
- (3) in connection with any **Claim** based upon, arising from, or in any way related to any fact, circumstance or situation that, before the Inception Date in Item 3 of the Declarations, was the subject of any notice given under any other insurance policy;
- (4) in connection with any **Claim** based upon, arising from, or in any way related to any:
- (a) discharge, dispersal, release, or escape of **Pollutants**, or any threat of such discharge, dispersal, release or escape; or
  - (b) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;
- (5) in connection with any **Claim** based upon, arising from, or in any way related to the liability of others assumed under any contract or agreement, provided that this exclusion shall not apply to liability:
- (a) that would have been incurred in the absence of such contract or agreement; or
  - (b) assumed under any agreement or declaration of trust under which any **Insured Plan** was established;
- (6) in connection with any **Claim** based upon, arising from, or in any way related to any employment-related **Wrongful Act**, including but not limited to any:
- (a) claims for unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, or failure to grant meal and rest periods; or
  - (b) actual or alleged violation of the Fair Labor Standards Act, Equal Pay Act, Worker Adjustment and Retraining Notification Act, or any rule or regulation promulgated thereunder, or similar federal, state, local or common laws, rules or regulations;
- (7) of an **Insured** based upon, arising from, or in any way related to the gaining, in fact, of any personal profit, remuneration or advantage to which such **Insured** is not legally entitled; or
- (8) of an **Insured** based upon, arising from, or in any way related to any criminal or deliberately fraudulent act or omission or any willful violation of law by such **Insured** if a judgment or other final adjudication establishes such an act, omission or violation; provided, however, that this exclusion shall only apply to **Insured Entities** if a past or present chief executive officer, chief financial officer or general counsel of the **Named Entity** committed such an act, omission or willful violation.

Regarding exclusions (7) and (8) above: The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured**.

- (B) Other than that portion of **Loss** that represents **Defense Costs** incurred to defend the following allegations or demands, the Insurer shall not pay **Loss** for any **Claim**:

- (1) for the actual or alleged failure to pay benefits pursuant to any **Insured Plan**, provided that this exclusion shall not apply to the extent that recovery of such benefits is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Insured Person**;
- (2) based upon, arising from, or in any way related to the actual or alleged failure to fund, or collect contributions owed to, an **Insured Plan**; or
- (3) for return or reversion of any contributions or assets to an **Insured Entity** from an **Insured Plan**.

#### IV. WAIVER OF RECOURSE

The Insurer shall have no right of recourse against any **Insureds** for any payment of **Loss** made by the Insurer under this **Liability Coverage Part** because of a **Wrongful Act** by such **Insureds** if the premium for this Policy was paid for by other than an **Insured Plan**.

#### V. CHANGES IN EXPOSURE

- (A) This Section shall supplement, and not replace, Common Terms and Conditions Section XIV. Changes in Exposure.
- (B) The provisions of Common Terms and Conditions Section XIV. Changes in Exposure (A) Mergers and New Subsidiaries shall also apply to any employee benefit plan of any newly merged or acquired entity and to any trustee of such plan to the extent that such plan and trustee would otherwise qualify as **Insureds** under this Policy. No coverage shall be available for any **Wrongful Act** of such **Insureds** occurring before the merger or acquisition of the entity or for any **Interrelated Wrongful Acts** thereto.
- (C) The provisions of Common Terms and Conditions Section XIV. Changes in Exposure (C) Loss of Subsidiary Status shall also apply to any **Insured Plan** of a former **Subsidiary** and any trustee of such plan. No coverage shall be available for any **Wrongful Act** of such **Insureds** occurring after an entity ceases to be a **Subsidiary**.

#### VI. TERMINATED PLAN COVERAGE

Subject to the terms and conditions of this Policy and **Liability Coverage Part**, coverage shall be afforded for **Loss** resulting from any **Claim** against the **Insureds** for a **Wrongful Act** involving any **Insured Plan** terminated by an **Insured Entity**, including post-termination **Wrongful Acts**.

#### VII. RETENTION WAIVER

No Retention shall apply to **Defense Costs** incurred in connection with a **Claim**, and the Insurer shall reimburse the **Insureds** for any covered **Defense Costs** paid by the **Insureds** within the Retention otherwise applicable to such **Claim**, if a:

- (A) final adjudication with prejudice pursuant to a trial, motion to dismiss or motion for summary judgment; or
- (B) complete and final settlement with prejudice,

establishes that none of the **Insureds** in such **Claim** are liable for any **Loss**.