

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 Sub-limit of Liability of \$100,000. Such a Sub-limit 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 Sub-limit 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:

- “**Claim**” means any:
 - (1) **Fiduciary Claim**; or
 - (2) **Settlement Program Notice**.
- “**Damages**” means the amounts, other than **Defense Costs**, that the **Insureds** are legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including:
 - (1) compensatory damages;
 - (2) settlement amounts;
 - (3) pre- and post-judgment interest;
 - (4) costs awarded pursuant to judgments;
 - (5) punitive and exemplary damages; and
 - (6) the multiple portion of any multiplied damage award.

However, **Damages** shall not include:

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

(i) **Settlement Fees**, provided that Settlement Program Coverage is elected;

(ii) 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
- up to \$50,000 imposed upon the **Insureds**, for the failure to provide required **ERISA** plan documents, pursuant to **ERISA** Section 502(c);

(Any such limit shall be a Sub-limit of Liability that shall be part of, and not in addition to, the Aggregate Limit of Liability for this **Liability Coverage Part** shown on the Declarations.)

(iii) 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 sub-paragraph (iii) is conditioned upon the following: (x) payment of such **Loss** shall be subject to the Sub-limit of Liability specified in ITEM 5 of the Declarations and (y) 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; or

(iv) where permitted by law the Insurer shall cover **Loss** under this **Liability Coverage Part** for civil penalties imposed under the English Pension Scheme Act of 1993, the English Pension Act of 1995, or the Pensions Act of 2004 and 2008 (all as amended from time to time) by the Pensions Regulator.

(b) non-monetary relief; and

(c) any other matters uninsurable pursuant to any applicable law; provided, however, that with respect to punitive and exemplary damages or the 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.

- **“Employee Stock Ownership Plan”** means any **Insured Plan** that invests more than 10% of its assets in securities of **Insured Entities**.
- **“Fiduciary Claim”** means any:
 - (1) written demand for monetary damages or other civil non-monetary relief commenced by the receipt of such demand;
 - (2) civil proceeding, including an arbitration or other alternative dispute resolution proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading;
 - (3) criminal proceeding commenced by the return of an indictment; or
 - (4) formal administrative or regulatory proceeding commenced by the filing or service of a notice of charges, formal investigative order or similar document, including an investigation by the Department of Labor or Pension Benefit Guaranty Corporation.

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“Fiduciary Claim” also means a written request to the **Insureds** to toll or waive a statute of limitations regarding a potential **Fiduciary Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

- **“Insured Person”** means any:
 - (1) **Manager**;
 - (2) **Employee**; or
 - (3) natural person who was, is or shall become trustee of an **Insured Plan** while in such person’s capacity as a trustee, which shall also include the functional equivalent of a trustee while serving in such a position outside of the U.S.

- **“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:

- (a) **Employee Stock Ownership Plan**; or
 - (b) any multi-employer plan.
- **“Insured(s)”** means any:
 - (1) **Insured Entity**;
 - (2) **Insured Person**; or
 - (3) **Insured Plan**.

 - **“Notice Manager”** means the natural persons in the offices of the chief executive officer, chief financial officer, general counsel, risk manager, human resources manager or any equivalent position to the foregoing, of an **Insured Entity**.

 - **“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.

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- “**Settlement Program**” means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or any other governmental body that is entered into by an **Insured Entity**.
 - “**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**.
 - “**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:

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- (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:
- (a) claims for unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, or
 - (b) actual or alleged violation of the 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;
 - (c) a **Wage and Hour Violation**.
- (7) of an **Insured**, based upon, arising from, or in any way related to the gaining of any personal profit, remuneration or advantage to which such **Insured** is not legally entitled if a judgment or other non-appealable final adjudication establishes that such a gain did occur; 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 non-appealable 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 general counsel or any position equivalent to the foregoing 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:
 - (a) recovery of such benefits is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Insured Person**; or
 - (b) a **Claim** made against any **Insured** alleges a loss to an **Insured Plan** and/or to the accounts of such **Insured Plan's** participants by reason of a change in value of the investments held by such **Insured Plan**, regardless of whether the amounts sought in such **Claim** are characterized by plaintiffs or held by a court to be benefits due or damages for breach of fiduciary duty;
 - (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

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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), Acquisitions or Created Subsidiaries, and (B), Mergers, shall also apply to any employee benefit plan of any newly merged, created 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, creation 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 (D) 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**.

VIII. NOTICE OF CLAIM

- (A) As a condition precedent to coverage under this **Liability Coverage Part**, the **Insureds** shall give the Insurer written notice of any **Claim** as soon as practicable after a **Notice Manager** becomes aware of such **Claim**, but in no event later than:
 - (1) if this Policy expires (or is otherwise terminated) without being renewed with the Insurer, ninety (90) days after the effective date of said expiration or termination; or
 - (2) the expiration of the Extended Reporting Period, if applicable;

provided, that if this Policy is cancelled for non payment of premium, the **Insured** will give to the Insurer written notice of such **Claim**, prior to the effective date of cancellation.

- (B) If, during the **Policy Period**, the **Insureds** become aware of a **Wrongful Act** that may

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reasonably be expected to give rise to a **Claim**, and, if written notice of such **Wrongful Act** is given to the Insurer during the **Policy Period**, including the reasons for anticipating such a **Claim**, the nature and date of the **Wrongful Act**, the identity of the **Insureds** allegedly involved, the alleged injuries or damages sustained, the names of potential claimants, and the manner in which the **Insureds** first became aware of the **Wrongful Act**, then any **Claim** subsequently arising from such **Wrongful Act** shall be deemed to be a **Claim** first made during the **Policy Period** on the date that the Insurer receives the above notice.

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