

ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.

FORCEFIELDSM
PRIVATE COMPANY
MANAGEMENT LIABILITY PACKAGE POLICY
Fiduciary Liability Coverage Section

In consideration of the payment of the premium and in reliance upon the **Application**, which shall be deemed to be attached to, incorporated into, and made a part of this Policy, and subject to the General Terms and Conditions and this Coverage Section, ALLIED WORLD ASSURANCE COMPANY (U.S.) INC. (the “**Insurer**”) and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

I. INSURING AGREEMENTS

A. Fiduciary Liability Coverage

The **Insurer** shall pay on behalf of any **Insured** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured** for any **Wrongful Act**, and reported to the **Insurer** in accordance with Section V. of the General Terms and Conditions.

B. HIPAA Claim Coverage

The **Insurer** shall also pay on behalf of any **Insured** the **Loss** arising from a **HIPAA Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured** and reported to the **Insurer** in accordance with Section V. of the General Terms and Conditions. The applicable Sublimit of Liability set forth in Item 4.F. of the Declarations is the **Insurer’s** maximum limit of liability for all **Loss** arising from all **HIPAA Claims**. The Sublimit of Liability for **HIPAA Claims** shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section.

C. Voluntary Compliance Program Coverage

The **Insurer** shall reimburse the **Insured** the **Voluntary Compliance Program Loss** incurred by the **Insured**, and reported to the **Insurer** in accordance with Section VII. of this Coverage Section.

The applicable Sublimit of Liability set forth in Item 4.F. of the Declarations is the **Insurer’s** maximum Limit of Liability for all **Voluntary Compliance Program Loss**. The Sublimit of Liability for **Voluntary Compliance Program Loss** shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section.

The reimbursement by the **Insurer** to the **Insured** of any **Voluntary Compliance Program Loss** shall not waive any of the **Insurer’s** rights under this Policy or at law, including in the event that such **Loss** results in a **Claim** under Insuring Agreements A. or B. of this Coverage Section.

II. DEFINITIONS

- A. “**Administration**” means:
- (1) advising, counseling or giving notice to **Employees**, participants or beneficiaries with respect to any **Plan**;
 - (2) providing interpretations to **Employees**, participants or beneficiaries with respect to any **Plan**; or
 - (3) handling of records or effecting enrollment, termination or cancellation of **Employees**, participants or beneficiaries, under any **Plan**.
- B. “**Application**” means: (1) the signed application submitted for this Policy and any attachments to such application, and for any other policy issued by the **Insurer**, or any affiliate thereof, of which this Policy is a direct renewal or replacement, including any attachments and other materials submitted with or incorporated into such applications; and (2) any publicly available documents filed by the **Named Insured** with any federal, state, local or foreign regulatory agency, including the U.S. Securities and Exchange Commission (“SEC”), during the twelve (12) months prior to the inception of the **Policy Period**.
- C. “**Benefits**” means any obligation under a **Plan** to a participant or beneficiary of such **Plan**, which is a payment of money or property, or the grant of a privilege, right, option or perquisite.
- D. “**Claim**” means any:
- (1) written demand for monetary, non-monetary or injunctive relief made against an **Insured**;
 - (2) judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an **Insured**, including any appeal therefrom, which is commenced by:
 - (a) service of a complaint or similar pleading;
 - (b) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (c) receipt or filing of a notice of charges;
 - (3) written notice of commencement of a fact-finding investigation by the U.S. Department of Labor (“DOL”), 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 Pensions Regulator or any successor body thereto;
 - (4) written request to toll or waive the applicable statute of limitations, or to waive any contractual time bar, relating to a potential **Claim** against an **Insured** for a **Wrongful Act**.

A **Claim** shall be deemed first made when any **Insured** first receives notice of the **Claim**.

E. “**Cleanup Costs**” means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

F. “**Defense Costs**” means:

- (1) reasonable and necessary fees, costs, charges or expenses resulting from the investigation, defense or appeal of a **Claim**;
- (2) premium for an appeal, attachment or similar bond, but without any obligation to apply for and obtain such bond, in connection with a **Claim**; or
- (3) any fees, costs, charges or expenses incurred by the **Insured** at the specific request of the **Insurer** to assist the **Insurer** in the investigation, defense or appeal of a **Claim**.

“**Defense Costs**” does not include: (a) amounts incurred by the **Insured** prior to the date a **Claim** is first made and reported to the **Insurer**; or (b) compensation or benefits of any **Insured Person** or any overhead expenses of the **Company**.

G. “**Employee**” means any natural person whose labor or service is engaged or directed by the **Company** or any **Plan** including any part-time, seasonal, leased or temporary employee or volunteer. **Employee** shall not include any **Independent Contractor**.

H. “**Employee Benefits Law**” means the Employee Retirement Income Security Act of 1974, or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state or local statutory law of the United States (“ERISA”), or any similar common or statutory law of any other jurisdiction anywhere in the world, to which a **Plan** is subject.

I. “**ESOP**” means: (1) any employee stock ownership plan as defined in ERISA, or; (2) any other **Plan** under which investments are made in securities of, or issued by, the **Company**, if scheduled in an Endorsement to this Policy.

J. “**Financial Impairment**” means the **Company** becoming a debtor-in-possession; or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**; or the filing of a petition under the bankruptcy laws of the United States of America or any equivalent event outside the United States of America.

K. “**HIPAA Claim**” means a **Claim** alleging, arising out of, based upon or attributable to a violation of the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto (“HIPAA”).

- L. **“HIPAA Penalties”** means civil money penalties imposed upon an **Insured** for violation of HIPAA’s Privacy Rule.
- M. **“Independent Contractor”** means any person working in the capacity of an independent contractor pursuant to a written contract or agreement between the **Independent Contractor** and the **Company**, which specifies the terms of the **Company’s** engagement of the **Independent Contractor**.
- N. **“Insured”** means:
- (1) the **Company**;
 - (2) any **Plan**;
 - (3) any **Insured Person**; and
 - (4) any other person or entity in his, her or its capacity as a fiduciary, administrator or trustee of a **Plan** and included in the Definition of **Insured** by specific written endorsement attached to this Policy.
- O. **“Insured Person”** means any:
- (1) past, present or future natural person director, officer, trustee, general partner, management committee member, member of board of managers, governor (or any foreign equivalent) of the **Company**; or
 - (2) **Employee**.
- P. **“Loss”** means:
- (1) damages, settlements or judgments;
 - (2) pre-judgment or post-judgment interest;
 - (3) costs or fees awarded in favor of the claimant;
 - (4) punitive and exemplary damages or the multiple portion of any multiplied damages award, but only to the extent that such damages are insurable under the applicable law most favorable to the insurability of such damages;
 - (5) **Voluntary Compliance Program Loss**, solely under Insuring Agreement C.; and
 - (6) **Defense Costs**.
- “Loss”** does not include:
- (a) amounts for which the **Insureds** are not legally liable;
 - (b) amounts which are without legal recourse to the **Insureds**;

- (c) taxes;
- (d) fines or penalties, except:
 - (i) as provided for in Definition P(4) above;
 - (ii) the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502(i) of ERISA;
 - (iii) the twenty percent (20%) or less civil penalty imposed upon an **Insured** under Section 502(l) of ERISA;
 - (iv) any civil fines and penalties imposed by either the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services, by the United Kingdom Occupational Pensions Regulatory Authority, by the United Kingdom Pensions Regulator or any successor body thereto; provided however, that any coverage for such fines and 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;
 - (v) fines and penalties which are part of **Voluntary Compliance Program Loss**, solely under Insuring Agreement C.; or
 - (vi) **HIPAA Penalties**, solely under Insuring Agreement B.;
- (e) the return or reversion to an employer of any contribution or asset of a **Plan**;
- (f) **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and 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**;
- (g) amounts deemed uninsurable under applicable law; or
- (h) amounts paid or incurred by the **Company** to comply with a judgment or settlement for non-monetary or injunctive relief.

However, this Coverage Section shall provide coverage for **Defense Costs** incurred in a **Claim** seeking amounts specified in paragraphs (a) through (h) above, subject to all other terms, conditions and exclusions of this Policy.

Q. **“Non-Indemnifiable Loss”** means **Loss** for which the **Company** is permitted or required to indemnify any **Insured Person**, but has not indemnified due to **Financial Impairment**.

R. **“Non-Qualified Plan”** means any of the following plans for a select group of management or highly compensated directors, officers or employees: deferred

compensation plan, supplemental executive retirement plan, top-hat plan, or excess benefit plan. **Non-Qualified Plan** shall not include any **ESOP** or stock option plan.

S. **“Plan”** means any plan, fund, trust, program or **Non-Qualified Plan** regardless of whether or not it is subject to regulation under Title I of ERISA or any part thereof, or meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986, as amended, and which is:

- (1) a welfare plan, as defined in ERISA, sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of **Employees**;
- (2) a pension plan, as defined in ERISA (other than an **ESOP**), sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of **Employees**, provided that, prior to the Inception Date of this Policy, such plan has been reported in writing to the **Insurer** pursuant to the terms of the **Application** for this Policy or pursuant to the terms of any prior Policy issued by the **Insurer** or the **Application** for such Policy, and the **Company** shall have paid the premium required for such plan;
- (3) a pension plan, as defined in ERISA (other than an **ESOP**), which, during the **Policy Period** becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of **Employees**, subject to the following:
 - (a) if the assets of such pension plan total twenty five percent (25%) or less of the total consolidated assets of the **Plans** covered by this Coverage Section as of the Inception Date of this Policy, this Coverage Section shall provide coverage with respect to **Wrongful Acts** that occurred after the date of such sponsorship. As a condition precedent to such coverage, the **Company** shall give written notice of such sponsorship to the **Insurer** prior to the end of the **Policy Period**; and
 - (b) if the assets of such pension plan total more than twenty five percent (25%) of the total consolidated assets of the **Plans** covered by this Coverage Section as of the Inception Date of this Policy, this Coverage Section shall provide coverage with respect to **Wrongful Acts** that occurred after the date of such sponsorship. As a condition precedent to such coverage, the **Company** shall give written notice of such sponsorship to the **Insurer** within ninety (90) days after the date of such sponsorship, with full particulars regarding such pension plan, and the **Company** shall have paid the premium required for such pension plan.
- (4) a plan which is both a welfare plan and a pension plan as defined in ERISA (other than an **ESOP**);

- (5) a government-mandated program for workers compensation, unemployment, social security or disability benefits for **Employees**, solely with respect to a **Wrongful Act** as defined in Definition V.(2), by an **Insured Person**;
- (6) an **ESOP** that is included in the definition of **Plan** by written Endorsement attached to this Policy; or
- (7) any other plan, fund, trust or program, including a multi-employer plan, solely with respect to a **Wrongful Act** by an **Insured Person** acting at the specific request of the **Company**, that is included in the definition of **Plan** by written Endorsement attached to this Policy.

With respect to paragraphs (1) and (2) of this Definition, coverage under this Coverage Section shall apply to any pension or welfare plan that was divested by merger, sold, spun-off or terminated prior to the **Policy Period** with respect to **Wrongful Acts** that occurred prior to the date of such merger, sale or spin-off or prior to the final date of asset distribution of such plan. As a condition precedent to such coverage, the **Company** shall give written notice of such transaction to the **Insurer** prior to the Inception Date of this Policy and the **Company** shall have paid the additional premium required for such **Plan**, as determined by the **Insurer**.

With respect to paragraphs (1) and (2) of this Definition, coverage under this Coverage Section shall apply to any pension or welfare plan that was merged, sold, spun-off or terminated during the **Policy Period** with respect to **Wrongful Acts** that occurred prior to the date of such merger, sale or spin-off or prior to the final date of asset distribution of such plan. As a condition precedent to such coverage, the **Company** shall give written notice of such transaction to the **Insurer** prior to the end of the **Policy Period**.

- T. **“Pollutants”** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on, any list of hazardous substances issued by the United States Environmental Protection Agency or any foreign, state, county, municipality, or locality counterpart thereof. Such substances shall include, without limitation, nuclear material or waste, any solid, liquid, gaseous or thermal irritant or contaminant, or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.
- U. **“Voluntary Compliance Program Loss”** means:
- (1) fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees imposed upon or collected from an **Insured** by the Internal Revenue Service (“IRS”) under the Employee Plans Compliance Resolution System pursuant to a written agreement with the IRS, but only in the event that the **Insured** first becomes aware during the **Policy Period** that a **Plan** must be corrected;

- (2) penalties imposed upon an **Insured** by the IRS or the DOL under a Delinquent Filer Voluntary Compliance Program, but only in the event that the failure to timely file Form 5500 occurs during the **Policy Period**; and
- (3) damages incurred by an **Insured** in connection with the DOL's Voluntary Fiduciary Correction Program, but only in the event that the **Insured's** compliance with such program results in the **Insured** obtaining a "No Action" letter from the DOL and that the breach of fiduciary duty occurs during the **Policy Period**; provided, however, that **Voluntary Compliance Program Loss** under this Definition U.(3) shall not include fines, penalties or sanctions.

Voluntary Compliance Program Loss shall not include any costs to correct the **Insured's** non-compliance.

V. "**Wrongful Act**" means any actual or alleged:

- (1) breach of the responsibilities, obligations or duties imposed upon fiduciaries of a **Plan** by an **Employee Benefits Law**; by an **Insured**;
- (2) negligent act, error or omission by an **Insured** in the **Administration** of a **Plan**;
- (3) matter claimed against an **Insured Person** solely by reason of his or her service as a fiduciary of a **Plan**; or
- (4) negligent hiring of either a third-party administrator of a **Plan** or a third-party administrator of **Benefits** provided under a **Plan**, by an **Insured**.

III. EXCLUSIONS

This Coverage Section shall not cover any **Loss** in connection with any **Claim**:

- A. arising out of, based upon or attributable to the gaining of any profit or advantage or improper or illegal remuneration by an **Insured** if a final judgment or adjudication establishes that such **Insured** was not legally entitled to such profit or advantage or that such remuneration was improper or illegal;
- B. arising out of, based upon or attributable to any deliberate fraud or any wilful violation of law by an **Insured** if a final judgment or adjudication establishes that such fraud or violation occurred;

In determining the applicability of Exclusions A. and B., the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured Person** shall not be imputed to any other **Insured Person**; however, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, an **Insured Person** who is a past or current Chairman of the Board, Chief Executive Officer, President or Chief Financial Officer of the **Company** shall be imputed to the **Company**.

- C. for failure to fund a **Plan** in accordance with ERISA or the **Plan** instrument or to collect an employer's contributions owed to a **Plan**; provided however, that this Exclusion shall not apply to: (1) the portion of **Loss** resulting from such **Claim** that is payable as a personal obligation of an **Insured Person**; or (2) the payment of **Defense Costs**;
- D. alleging, arising out of, based upon or attributable to the liability of others assumed by any **Insured** under any express contract or agreement, either oral or written; provided however, that this Exclusion shall not apply: (1) to the extent that an **Insured** would have been liable in the absence of such contract or agreement; (2) if the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which a **Plan** was established; or (3) to the payment of **Defense Costs** in any such **Claim** against an **Insured Person**;
- E. alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 5. of the Declarations as respects this Coverage Section, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured** had notice, including any **Claim** alleging or derived from the same or essentially the same facts, or the same or related **Wrongful Acts**, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- F. alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related **Wrongful Acts** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, before the Inception Date of this Policy as set forth in Item 2. of the Declarations, under any policy, whether excess or underlying, of which this Policy is a renewal or replacement or which it may succeed in time;
- G. alleging, arising out of, based upon, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or seeking any **Cleanup Costs**; provided however, that this Exclusion shall not apply to any **Non-Indemnifiable Loss** constituting damages to a **Plan**, except for **Non-Indemnifiable Loss** constituting **Cleanup Costs**;
- H. for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided however, that this Exclusion shall not apply to **Defense Costs** incurred in defending a **Claim** alleging a violation of the responsibilities, obligations or duties imposed by ERISA;
- I. for any actual or alleged violation of any law governing workers' compensation, unemployment insurance, social security or disability benefits, or any similar law, anywhere in the world; except the Consolidated Omnibus Budget Reconciliation Act of 1985, HIPAA, or any amendments thereto or any rules or regulations promulgated thereunder;

- J. alleging, arising out of, based upon, or attributable to any actual or alleged discrimination, harassment, retaliation, wrongful discharge, termination or any other employment-related or employment practice claim; provided, however, that this Exclusion shall not apply to any **Claim** asserted under Section 510 of ERISA;
- K. alleging, arising out of, based upon or attributable to any **Wrongful Act** with respect to a **Plan**, taking place at any time when the **Company** did not sponsor such **Plan** or when the **Insured Person** was not a fiduciary, administrator, trustee, director, officer, governor, management committee member, member of the board of managers, general partner or employee of the **Company** or, if applicable, the **Plan**;
- L. alleging, arising out of, based upon or attributable to any act or omission of an **Insured** in his, her or its capacity as a fiduciary or administrator of any plan, fund or program, other than a **Plan** as defined in this Coverage Section, or by reason of his, her or its status as a fiduciary or administrator of such other plan, fund or program.

IV. RETENTION

No Retention is applicable to **HIPAA Claims** or **Voluntary Compliance Program Loss**.

V. DEFENSE AND SETTLEMENT OF A CLAIM

- A. The **Insurer** does not assume any duty to defend any **Claim** under this Coverage Section. However, the **Insurer** shall have the right to fully and effectively associate with the **Insured** in the control, investigation, defense and settlement of any **Claim**.
- B. The **Insured(s)** shall defend and contest any **Claim** made against them. The **Insured** shall obtain the **Insurer's** written consent in the selection of defense counsel to represent the **Insured** as respects any **Claim**, such consent shall not be unreasonably withheld.
- C. The **Insured(s)** shall not admit or assume any liability, incur any **Defense Costs**, make any settlement offer, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the **Insurer**. Any **Loss** incurred by the **Insured(s)** and/or any settlements or judgments agreed to by the **Insured(s)** without such consent shall not be covered by this Policy. However, the **Insurer's** consent is not required for the **Insured** to settle a **Claim** for a **Loss** amount within the applicable Retention, provided that such settlement fully resolves such **Claim** with respect to all **Insureds** and the **Insurer**.
- D. At the request of the **Named Insured**, the **Insurer** shall reimburse **Defense Costs** prior to the final disposition of any **Claim**, subject to all other terms and conditions of this Policy. In the event and to the extent that the **Insureds** shall not be entitled to payment of such **Defense Costs** under the terms and conditions of this Coverage Section, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests.

E. **Right to Tender Defense**

- (1) Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of a **Claim** to the **Insurer**; however, the **Insureds** shall not have the right to tender the defense of any matter under Insuring Agreement C. Voluntary Compliance Program Coverage, of this Coverage Section.
- (2) This right shall be exercised by the **Named Insured** on behalf of all **Insureds** by providing written notice to the **Insurer**. The right to tender the defense of a **Claim** shall terminate if it is not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against an **Insured** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or the **Insurer** with respect to such **Claim**. In the event the **Insureds** have complied with all of the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent.
- (3) The **Insurer's** assumption of the defense of the **Claim** shall be effective upon the **Insurer** providing written confirmation thereof to the **Named Insured**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**, subject to the provisions of this Section V. The **Insurer** shall not be obligated to defend or continue to defend a **Claim**, or to pay or reimburse **Defense Costs**, after the applicable Limit of Liability has been exhausted.
- (4) When the **Insurer** has assumed the duty to defend, it shall have the right to investigate and conduct negotiations and, with the **Insured's** consent, which shall not be unreasonably withheld, enter into the settlement of any **Claim** that the **Insurer** deems appropriate.
- (5) When the **Insurer** has assumed the duty to defend, it shall pay **Defense Costs** excess of the applicable Retention, subject to all other terms and conditions of this Policy. In the event and to the extent that the **Insureds** shall not be entitled to payment of such **Defense Costs** under the terms and conditions of this Coverage Section, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests.

F. **Voluntary Compliance Program Loss Coverage**

- (1) With respect to Insuring Agreement C. Voluntary Compliance Program Coverage the **Company**, and not the **Insurer**, has the duty to investigate, evaluate, negotiate and settle any matter which may result in **Voluntary Compliance Program Loss**.

- (2) The **Insurer** shall have the right to effectively associate with the **Company** in such process, including the negotiation of any settlement of any matter which results in **Voluntary Compliance Program Loss**.

VI. COOPERATION

Each and every **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require relating to the defense and settlement of any **Claim** or the settlement of any matter resulting in **Voluntary Compliance Program Loss**, and the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation the assertion of an **Insured's** indemnification or contribution rights.

VII. NOTICE OF VOLUNTARY COMPLIANCE PROGRAM LOSS

The **Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this Policy to reimburse **Voluntary Compliance Program Loss**, give written notice to the **Insurer** at either the physical or email address indicated in Item 7. of the Declarations, of any matter which any **Insured** reasonably believes may result in **Voluntary Compliance Program Loss** within thirty (30) days after the **Insureds** become aware of such matter, but in no event later than thirty (30) days after the Expiration Date set forth in Item 2. of the Declarations.

VIII. RIGHT OF RECOURSE

If this Policy is purchased with plan assets, the **Insurer** shall have a right of recourse against any fiduciary whose breach of a fiduciary obligation, as imposed by ERISA, results in a **Loss** under this Policy paid by the **Insurer**. If, however, it is confirmed on the **Application** that all or a portion of the premium for this Policy is paid by or on behalf of the fiduciaries with non-plan assets, the **Insurer** shall have no right of recourse against any fiduciary with respect to any **Claim**, including but not limited to, rights of contribution and subrogation.

IX. REPRESENTATIONS AND SEVERABILITY

- A. In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application**. All such statements and representations shall be deemed to be the basis of this Policy and are to be considered as incorporated into this Policy.
- B. With respect to the statements and representations contained in the **Application**, no knowledge of any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against such **Insured Person**. However, the knowledge possessed by any **Insured Person** who is a past or current Chairman of the Board, Chief Executive Officer, President or Chief Financial Officer of the **Company** shall be imputed to the **Company** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against the **Company**.

X. ORDER OF PAYMENTS

A. In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Coverage Section, the **Insurer** shall in all events:

- (1) first, pay **Loss** for which coverage is provided under this Coverage Section for any **Insured Person**;
- (2) second, only after payment of **Loss** has been made pursuant to paragraph (1) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the **Loss** for which coverage is provided under this Coverage Section for any covered **Plan**; and
- (3) third, only after payment of **Loss** has been made pursuant to paragraph (1) and (2) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the **Loss** for which coverage is provided under this Coverage Section for the **Company**.