

## 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 Coverage Part. This Insuring Agreement shall also be subject to the Settlement Program Coverage Deductible 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 monetary damages or injunctive relief commenced by the receipt of such demand;
- (2) civil proceeding commenced by the service of a complaint 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.

**“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.

(D) **“Insured Person”** means any:

- (1) **Manager**;
- (2) **Employee**; or
- (3) past, present, or future trustee of an **Insured Plan** in such person’s capacity as a trustee.

(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:

- (1) **Employee Stock Ownership Plan**; or
- (2) any multi-employer plan.

(F) **“Insureds”** means any:

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

(G) **“Loss”** means the amount that the **Insureds** are legally obligated to pay as a result of a **Claim**, including, without limitation, **Defense Costs**, damages, settlements, judgments, and pre- and post-judgment interest.

**Loss** shall include punitive and exemplary damages and the multiple portion of any multiplied damage award where insurable by law. Regarding the insurability of such damages, the Insurer shall not contend for any reason, unless appropriate to do so as a matter of law or public policy, that such damages are uninsurable. The insurability of such damages shall be governed by the laws of any applicable jurisdiction that permits coverage of such damages.

**Loss** shall not include:

- (1) taxes, fines or penalties imposed by law, or matters that may be deemed uninsurable under the law pursuant to which this Policy shall be construed; or
- (2) non-monetary relief.

Notwithstanding the above, **Loss** shall include:

- (1) civil penalties of up to 5% imposed pursuant to **ERISA** Section 502(i) or up to 20% imposed pursuant to **ERISA** Section 502(l); or
  - (2) if Settlement Program Coverage is included, **Settlement Fees**.
- (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) 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
  - (3) matter claimed against any **Insureds** solely due to such **Insureds** 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** for any **Claim**:
- (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 thereof;
  - (2) 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) 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) based upon, arising from, or in any way related to any:
  - (a) discharge, dispersal, release, or escape of **Pollutants**, nuclear material or nuclear waste 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**, nuclear material or nuclear waste;
- (5) 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) based upon, arising from, or in any way related to the gaining, in fact, of any personal profit, remuneration or advantage to which the **Insureds** are not legally entitled; or
- (7) based upon, arising from, or in any way related to any deliberately fraudulent or criminal act or omission or any willful violation of law by the **Insureds** if a judgment or other final adjudication establishes such an act, omission or violation.

Regarding exclusions (6) and (7) above, no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**.

(B) Other than **Defense Costs**, the Insurer shall not pay **Loss** for any **Claim**:

- (1) for 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 a 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 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 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. DEDUCTIBLE WAIVER

No Deductible 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 Deductible 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**.