

**FIDUCIARY LIABILITY
COVERAGE PART**

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SAMPLE

FIDUCIARY LIABILITY COVERAGE PART

1. INSURING AGREEMENTS

A. Fiduciary Liability

The **Insurer** shall pay **Loss** on behalf of the **Insureds** resulting from a **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

The **Insurer** shall pay a **Voluntary Settlement** and **Defense Costs** on behalf of the **Insureds** resulting from a **Settlement Program Notice** first given to the **Insurer** during the **Policy Period** or Extended Reporting Period, if applicable, provided that such **Voluntary Settlement** and **Defense Costs** are incurred after such **Settlement Program Notice** is first given to the **Insurer**.

This Insuring Agreement shall be subject to a Sublimit of Liability of \$100,000. Such Sublimit of Liability shall be the maximum aggregate amount that the **Insurer** shall pay under this Insuring Agreement. Such Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**. No Deductible shall apply to this Insuring Agreement.

2. DEFINITIONS

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

A. "Administration" means:

1. advising, counseling or giving notice to **Employees**, participants or beneficiaries regarding any **Plan**;
2. providing interpretations regarding any **Plan**; or
3. handling records or enrolling, terminating or canceling **Employees**, participants or beneficiaries regarding any **Plan**.

B. "Claim" means any:

1. written demand for monetary or non-monetary relief commenced by the **Insureds'** receipt of such demand;
2. civil proceeding commenced by the service upon the **Insureds** of a complaint or similar pleading;
3. criminal proceeding commenced by the return of an indictment, information or similar pleading;
4. formal administrative or regulatory proceeding commenced by the filing of a notice of charges or any similar document;

5. formal administrative or regulatory governmental investigation (including a fact-finding investigation by the Department of Labor, Pension Benefit Guaranty Corporation or similar authority) of an **Insured** commenced by the service upon or other receipt by such **Insured** of a written notice from an investigating authority identifying such **Insured** as a target against whom a formal proceeding may be commenced;
 6. written request to an **Insured** to toll or waive a statute of limitations regarding a potential **Claim** as described in 1 through 5 above, commenced by the **Insured's** receipt of such request; or
 7. regarding Insuring Agreement B, a **Settlement Program Notice**.
- C. "**Employee**" means any natural person whose labor or service was, is or shall be engaged by and directed by any **Insured Organization** or **Plan**, including fulltime, part-time, seasonal, leased and temporary employees as well as volunteers. **Employee** shall not include any **Independent Contractor**.
- D. "**Executive**" means any natural person who was, is or shall be a duly elected or appointed:
1. director, officer, or member of the board of managers or management committee of an **Insured Organization**;
 2. in-house general counsel of an **Insured Organization**; or
 3. manager of an **Insured Organization** organized outside the United States of America if such position is equivalent to those specified in 1 or 2 above.
- E. "**Insured Person**" means any:
1. **Executive**;
 2. **Employee**;
 3. natural person who was, is or shall be a duly elected or appointed trustee of any **Plan**; or
 4. a fiduciary of a **Plan** if such person is specifically included as an **Insured Person** in a written endorsement issued by the **Insurer**.
- F. "**Insureds**" means any:
1. **Insured Organization**;
 2. **Plan**; or
 3. **Insured Persons**.
- G. "**Loss**" means the amount that the **Insureds** are legally obligated to pay resulting from a **Claim**, including, without limitation, damages, settlements, judgments, pre- and post-judgment interest, and **Defense Costs**. Regarding Insuring Agreement B, "**Loss**" means **Voluntary Settlements** and **Defense Costs**.

Loss shall include punitive and exemplary damages where insurable by law. The insurability of such damages shall be governed by the laws of any applicable jurisdiction that permits coverage of such damages.

Loss shall exclude any:

1. taxes, fines or penalties imposed by law other than any;
 - a. five percent (5%) or less, or twenty percent (20%) or less, civil penalties imposed under Section 502(i) or (l), respectively, of **ERISA**;
 - b. civil penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the Occupational Pensions Regulatory Authority in the United Kingdom or any successor thereto; provided any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this Policy;
 - c. civil penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, provided that the **Insurer's** maximum aggregate liability for all such civil money penalties under this Policy shall be subject to a sublimit of \$25,000 that shall be the maximum aggregate amount that the **Insurer** shall pay for all such penalties and shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**; or
 - d. solely with respect to Insuring Agreement B, **Voluntary Settlements**;
2. multiple portion of any multiplied damage award;
3. matters that are uninsurable under the law pursuant to which this Policy shall be construed;
4. amount for which the **Insureds** are not financially liable or for which the claimants are without legal recourse to the **Insureds**; or
5. non-monetary relief.

H. "Plan" means:

1. any **Sponsored Plan**; or
2. any government-mandated insurance program for workers compensation, unemployment, social security or disability benefits for **Employees**.

I. "**Settlement Program**" means any voluntary compliance resolution program or similar voluntary settlement program administered by the United States Internal Revenue Service, United States Department of Labor or any other domestic or foreign governmental authority. Such programs include, without limitation, the Employee Plans Compliance Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-Correction, Tax Sheltered Annuity Voluntary Correction Program, Delinquent Filer Voluntary Compliance Program, and Voluntary Fiduciary Correction Program.

J. “**Settlement Program Notice**” means prior written notice to the **Insurer** by any **Insured** of the **Insured’s** intent to enter into a **Settlement Program**.

K. “**Sponsored Plan**” means any:

1. Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each is defined in **ERISA**, operated solely by any **Insured Organization**, or jointly by any **Insured Organization** and a labor organization, for the benefit of **Employees** only;
2. employee benefit plan or program not subject to **ERISA** sponsored solely by any **Insured Organization** for the benefit of **Employees** only, including any fringe benefit or excess benefit plan;
3. employee benefit plan or program otherwise described in paragraphs 1. or 2. above while such plan or program is being actively developed, formed or proposed by any **Insured Organization** prior to the formal creation of such plan or program; provided, however, no coverage is afforded for any **Claim** against an **Insured** in a settlor or similar uninsured capacity with respect to any plan or program; or
4. plan, fund, or program specifically included as a **Sponsored Plan** in a written endorsement issued by the **Insurer**.

Sponsored Plan shall not include any multi-employer plan or employee stock ownership plan, unless such plan is specifically included as a **Sponsored Plan** by a written endorsement issued by the **Insurer**.

L. “**Voluntary Settlement**” means any fees, fines, or penalties paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation; provided that **Voluntary Settlement** shall not include (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines, or penalties relating to a **Plan** which, as of the earlier of inception date of this Policy or the inception date of the first policy in an uninterrupted series of policies issued by the **Insurer** of which this **Policy** is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

M. “**Wrongful Act**” means any actual or alleged:

1. breach of the responsibilities, obligations or duties imposed by **ERISA** upon fiduciaries of any **Sponsored Plan** in their capacity as such fiduciaries;
2. act, error or omission in **Administration** by any **Insured** in their capacity as such; or
3. matter claimed against any **Insured Persons** solely by reason of their service as a fiduciary of any **Sponsored Plan**.

3. EXCLUSIONS

A. The **Insurer** shall not pay **Loss** for any **Claim** against an **Insured**:

1. arising from, based upon, or attributable to any fact, circumstance or situation that, before the inception date of this Policy, was the subject of any notice given under any other insurance policy;
2. arising from, based upon, or attributable to any:
 - a. demand, suit or proceeding made or initiated against any **Insured** on or prior to the applicable Pending and Prior Litigation Date in Item 6 of the Declarations; or
 - b. **Wrongful Act** specified in such prior demand, suit or proceeding or any **Interrelated Wrongful Acts** thereto;
3. 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;
4. arising from, based upon, or attributable to any:
 - a. discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**, nuclear material or nuclear waste or any threat of such discharge, dispersal, release, escape, seepage, migration or disposal; 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,

provided that this exclusion shall not apply to any (i) **Claim** by or on behalf of a beneficiary or participant in any **Sponsored Plan** for diminution in value of any securities owned by the **Sponsored Plan** in any organization other than any **Insured Organization**; or (ii) **Non-Indemnifiable Loss**;

5. arising from, based upon, or attributable to any liability under any contract or agreement, provided that this exclusion shall not apply to the extent that liability:
 - a. would have been incurred in the absence of such contract or agreement; or
 - b. was assumed in accordance with or under an agreement or declaration of trust pursuant to which a **Plan** was established;
6. for the failure of any **Insureds** to comply with any workers' compensation, unemployment insurance, social security, or disability benefits law or any similar law except:
 - a. the Consolidated Omnibus Budget Reconciliation Act of 1985; or
 - b. the Health Insurance Portability and Accountability Act of 1996;
7. for discrimination in violation of any law other than **ERISA**;

8. arising from, based upon, or attributable to the gaining, in fact, of any personal profit, remuneration or advantage to which such **Insured** is not legally entitled; or
9. arising from, based upon, or attributable to any deliberately fraudulent or criminal act or omission or willful violation of law by such **Insured** if a judgment or other final adjudication in such **Claim** or another proceeding establishes that such act, omission or violation occurred.

Regarding exclusions 8 and 9 above: (i) no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**; and (ii) only a **Wrongful Act** by a past, present or future chairman of the board, chief executive officer, president, chief operating officer, chief financial officer, general counsel or limited liability company manager of any **Insured Organization** or a past, present or future **Plan** trustee shall be imputed to any **Insured Organization** or **Plan**.

B. Other than **Defense Costs**, the **Insurer** shall not pay **Loss** for any **Claim** against an **Insured** for:

1. failure to fund, or collect contributions owed to, any **Plan**;
2. return or reversion to an employer of any contribution or asset of any **Plan**; or
3. benefits under any **Plan**, including benefits that would be due under any **Plan** if such **Plan** complied with all applicable laws, provided that this exclusion shall not apply to the extent that an **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation.

4. **TERMINATED PLAN COVERAGE**

If, before or during the **Policy Period**, any **Plan** is terminated, coverage for such **Plan** and its **Insureds** shall continue until termination of this Policy. Such coverage continuation shall apply to covered **Claims** for **Wrongful Acts** occurring prior to or after the date the **Plan** was terminated.