

## PRIVATE COMPANY MANAGEMENT LIABILITY POLICY FIDUCIARY LIABILITY COVERAGE SECTION

In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

### I. INSURING AGREEMENTS

#### FIDUCIARY LIABILITY COVERAGE

The Underwriter shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of a **Claim** first made against the **Insureds** during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act**.

### II. COVERAGE ENHANCEMENTS

#### A. VOLUNTARY SETTLEMENT PROGRAM COVERAGE

The Underwriter shall pay on behalf of the **Insureds** any **Voluntary Settlement** and **Defense Expenses** which the **Insureds** become legally obligated to pay resulting from a **Voluntary Settlement Program Notice** first given to the Underwriter during the **Policy Period**, provided such **Voluntary Settlement** and **Defense Expenses** are incurred after such **Voluntary Settlement Program Notice** is first given to the Underwriter. The Underwriter's maximum liability under this Section II.A for all covered **Voluntary Settlements** and **Defense Expenses**, combined, shall be the Voluntary Settlement Program Costs Sublimit of Liability set forth in ITEM 8 of the Declarations.

#### B. ADDITIONAL DEFENSE EXPENSES LIMIT FOR FIDUCIARY LIABILITY

If Additional **Defense Expenses** Limit for Fiduciary Liability is selected on ITEM 8 of the Declarations, then the Underwriter shall provide an additional Limit of Liability for **Defense Expenses** under this Coverage Section, in the amount set forth in the Declarations, which shall be in addition to and not part of the Aggregate Limit of Liability for this Coverage Section and in addition to and not part of the Combined Aggregate Limit of Liability set forth in ITEM 8 of the Declarations. Such Additional Limit shall attach only after the exhaustion of such Aggregate Limit of Liability and any amounts payable under any other insurance policies that are specifically written excess of this Coverage Section.

#### C. PENSION CRISIS MANAGEMENT REIMBURSEMENT COVERAGE

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the Pension Crisis Management Expense Sublimit stated in ITEM 8 of the Declarations, for all **Pension Crisis Management Expenses** actually paid by the **Organization** in connection with a **Pension Crisis Management Event** that first occurs during the **Policy Period**, subject to the Sublimit of Liability as set forth in ITEM 8 of the Declarations, for all **Pension Crisis Management Expenses**, which shall be part of and not in addition to the Aggregate Limit of Liability for this Coverage Section.

### III. DEFINITIONS

When used in the Fiduciary Liability Coverage Section, the following terms, whether in the singular or plural, are defined as follows:

- A. **Administration** means (i) advising, counseling or providing notice to employees, beneficiaries or **Plan** participants with respect to any **Plan**, (ii) providing interpretations with respect to any **Plan**, (iii) handling records or effecting enrollment, terminating or canceling employees, beneficiaries or participants under any **Plan**, (iv) complying with the provisions of the Health Insurance Portability and Accountability Act (HIPAA) or Health Information Technology for Economic and Clinical Health Act (HITECH).
- B. **Affordable Care Act** means the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2011, as amended.
- C. **Claim** means:
1. a written demand against any **Insured** for monetary damages or non-monetary (including injunctive) relief, including a written demand that the **Insured** toll or waive a statute of limitations or a written demand or request for arbitration, mediation or other alternative dispute resolution, which shall be deemed first made upon the **Insured's** receipt of the demand or request;
  2. a civil proceeding against any **Insured** commenced by and which shall be deemed first made upon the service upon the **Insured** of a complaint or similar pleading, or an appeal of any such proceeding;
  3. a criminal proceeding against any **Insured** commenced by and which shall be deemed first made upon, the **Insured's** arrest, the return of an indictment or information, or receipt of a notice of charges or similar document, or an appeal of any such proceeding;
  4. a formal administrative or regulatory proceeding against any **Insured** commenced by and which shall be deemed first made upon, the service on or other receipt by the **Insured** of a notice of charges or similar document, or an appeal of any such proceeding;
  5. any **Fiduciary Inquiry**, provided that the **Fiduciary Inquiry** shall be deemed a **Claim** only if the **Insured** elects to provide written notice of such **Fiduciary Inquiry** to the Underwriter pursuant to Section IV.B of this Coverage Section and shall be deemed first made when it is noticed to the Underwriter;
  6. a civil, criminal, administrative or regulatory investigation (including a fact-finding investigation by the Department of Labor, Pension Benefit Guaranty Corporation or similar authority) of any **Insured** commenced by and which shall be deemed first made upon the service on or other receipt by the **Insured** of a target letter or formal investigative order;
  7. solely with respect to Section II.A, **Claim** means a **Voluntary Settlement Program Notice** only if the **Insured** elects to provide written notice of such **Voluntary Settlement Program Notice** to the Underwriter pursuant to Section IV.B of this Coverage Section and shall be deemed first made when it is noticed to the Underwriter.

D. **Fiduciary Inquiry** means:

1. a civil, criminal, administrative, or regulatory investigation or inquiry of an **Insured Person** by an **Enforcement Unit**, commenced by the **Insured Person's** receipt of a subpoena, Wells Notice, target letter (within the meaning of Title 9, §11.151 of the U.S. Attorney's Manual), formal order of investigation, civil investigative demand, notice of charges, order to show cause, search warrant, S.E.C. Form 1661 or 1662, or other similar document, or the functional or foreign equivalent thereof;
2. a written request or demand of an **Insured Person** by an **Enforcement Unit** for an interview, meeting, sworn testimony or documents in connection with the business of the **Organization**, or in connection with such **Insured Person** in his or her capacity as such;
3. a written request or demand of an **Insured Person** by an **Organization** (including its board of directors or any committee of its board of directors) for an interview, meeting, sworn testimony or documents in connection with an investigation of an **Organization** by an **Enforcement Unit**;

in connection with a **Plan**, insurance actually or attempted to be purchased through a **Healthcare Exchange**, or the facilitation of the administration of a "multiemployer plan" by a third party.

**Fiduciary Inquiry** shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance review, examination, production or audit, industry sweep, including any request for mandatory information from an **Enforcement Unit**, conducted in an **Organization's** and/or **Enforcement Unit's** normal review or process or any subpoena received by an **Insured** as a non-party witness.

E. **Healthcare Exchange** means any public, private or government-sponsored or controlled entity established to facilitate the purchase of health insurance in accordance with the **Affordable Care Act**.

F. **Insured Persons** means any one or more natural persons who were, now are or shall become duly elected or appointed directors, trustees, governors, **Managers**, officers, **Employees** (including employed lawyers solely in their capacity as an **Employee**), advisory directors or members of a duly constituted committee or board of any **Organization** or **Plan** or their functional equivalent.

G. **Insureds** means:

1. the **Insured Persons**;
2. the **Organization**; and
3. the **Plans**.

H. **Loss** means the total amount the **Insureds** become legally obligated to pay on account of a **Claim** made against them, including, but not limited to, damages (including punitive, exemplary or multiple damages, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to either the **Insureds** or this Policy responding to the **Claim** giving rise to such damages, whichever is most favorable to the insurability of such

damages), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements, **Defense Expenses**, and solely with respect to Section II.A, **Loss** means a **Voluntary Settlement** and **Defense Expenses** associated therewith.

**Loss** includes:

1. the five percent (5%) or less or the twenty percent (20%) or less civil penalties imposed under §502(i) or (l) of **ERISA**;
2. civil penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, provided that the Underwriter's maximum aggregate liability for all such civil money penalties under this Coverage Section shall be the Sublimit of Liability set forth in ITEM 8 of the Declarations for Penalties for Violations of HIPAA Privacy Provisions;
3. the civil penalties imposed upon an **Insured** as a fiduciary under Section 502(c) of **ERISA**, other than penalties under the Pension Protection Act, provided that the Underwriter's maximum aggregate liability under this Coverage Section for all such civil penalties shall be the Sublimit of Liability set forth in ITEM 8 of the Declarations for Penalties under Section 502(c) of ERISA;
4. the civil penalties imposed upon an **Insured** under the Pension Protection Act of 2006, provided that the Underwriter's maximum aggregate liability under this Coverage Section for all such civil penalties shall be the Sublimit of Liability set forth in ITEM 8 of the Declarations for Penalties under the Pension Protection Act of 2006;
5. the civil penalties imposed upon an **Insured** under the **Affordable Care Act**, provided that the Underwriter's maximum aggregate liability under this Coverage Section for all such civil penalties shall be the Sublimit of Liability set forth in ITEM 8 of the Declarations for Penalties under the Affordable Care Act;
6. the fifteen percent (15%) or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986, provided that the Underwriter's maximum aggregate liability under this Coverage Section for all such penalties shall be the Sublimit of Liability set forth in ITEM 8 of the Declarations for Penalty under IRC Section 4975;
7. civil penalties imposed upon an **Insured** by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder, 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 Coverage Section;

**Loss**, except with respect to **Defense Expenses**, does not include:

- i. any amount not indemnified by the **Organization** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
- ii. taxes, fines or penalties imposed by law, other than civil penalties expressly referenced in paragraphs 1 through 7 above;

- iii. any costs incurred by the **Organization** or **Plan** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief;
- iv. matters uninsurable under the law pursuant to which this Policy is construed;
- v. (i) benefits due or to become due under any **Plan**, or (ii) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, or (iii) that portion of any settlement or judgment which constitutes such benefits, except to the extent that recovery for such benefits is based upon a covered **Wrongful Act** by an **Insured Person** and such benefits are payable as a personal obligation of such **Insured Person**;

provided **Loss** shall include that portion of a settlement or judgment attributable to **Wrongful Acts** which actually or allegedly cause or contribute to a reduction or loss in the value of a **Plan's** assets or a participant's account in a **Plan**, due to investment losses, lost investment opportunities, excessive costs or failure to comply with such participant's investment directions.

I. **Pension Crisis Management Event** means any of the following events which, in the good faith opinion of the **Organization**, did cause or is reasonably likely to cause material public harm to the **Organization**:

- 1. a loss in the total assets of a Plan of twenty-five (25%) or more in a thirty (30) day period caused by investment loss, or a loss in a specific Plan investment of seventy-five percent (75%) or more in a thirty (30) day period; or
- 2. the public announcement of (a) a Plan's third party service provider's fraud, arrest, indictment or bankruptcy, or (b) a governmental or regulatory agency's investigation into, or litigation against, a Plan's third party service provider.

J. **Pension Crisis Management Expenses** means reasonable fees, costs, and other expenses of a public relations or crisis management firm engaged by the **Organization** and approved by the Underwriter, such approval not to be unreasonably withheld, to mitigate reputational harm to such **Organization** as a result of a **Pension Crisis Management Event**.

K. **Plan** means:

- 1. any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each is defined in **ERISA**, which was, is now, or hereafter becomes sponsored solely by the **Organization**, or sponsored jointly by the **Organization** and a labor organization, solely for the benefit of the employees of the **Organization**;
- 2. any other employee benefit plan or program not subject to **ERISA** sponsored solely by the **Organization** for the benefit of the employees of the **Organization**, including any fringe benefit, deferred compensation, supplemental executive retirement plan, top-hat plan or excess benefit plan;
- 3. any 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 **Organization** prior to the formal creation of such plan or program;
- 4. any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for employees of the **Organization**; and

5. any Voluntary Employee's Beneficiary Association as defined in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended, for which the purpose is to provide life, sickness, accident or other benefits for voluntary members who are **Employees** (including their dependents or designated beneficiaries).

**Plan** shall not include any "multiemployer plan" or "employee stock ownership plan" as defined by **ERISA**, unless such plan is specifically included as a **Plan** by endorsement to this Policy.

- L. **Voluntary 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 Settlement Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-Correction, Tax Sheltered Annuity Voluntary Correspondence Program, Delinquent Filer Voluntary Compliance Program, and Voluntary Fiduciary Correction Program.
- M. **Voluntary Settlement Program Notice** means prior written notice to the Underwriter by any **Insured** of the **Insured's** intent to enter into a **Voluntary Settlement Program**.
- N. **Voluntary Settlement** means any fees, fines or penalties paid by an **Insured** to a governmental authority pursuant to a **Voluntary Settlement Program** for the actual or alleged inadvertent non-**Settlement** by a **Plan** with any statute, rule or regulation; provided **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 the inception date of this Policy or the inception date of the first policy in an uninterrupted series of policies issued by the Underwriter of which this Policy is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.
- O. **Wrongful Act** means:
  1. any actual or alleged breach of the responsibilities, duties or obligations imposed by **ERISA** upon fiduciaries of any Plan committed or allegedly committed by an **Insured** in the **Insured's** capacity as such;
  2. any actual or alleged act, error or omission committed or attempted by the **Insureds** in the **Administration** of a **Plan**;
  3. any actual or alleged act, error or omission by an **Insured** in the **Insured's** settlor capacity with respect to any **Plan**;
  4. any actual or alleged act, error or omission by an **Insured** in connection with insurance actually or attempted to be purchased through a **Healthcare Exchange**; and
  5. any matter claimed against an **Insured** solely by reason of their status as a fiduciary of a **Plan**,

provided, however, that a **Fiduciary Inquiry** of an **Insured Person** shall be treated as a **Claim** for a **Wrongful Act** whether or not a **Wrongful Act** is alleged.

#### IV. EXCLUSIONS

The Underwriter shall not be liable under this Coverage Section to pay any **Loss** on account of that portion of any **Claim** made against any **Insured**:

##### A. PRIOR NOTICE

based upon, arising out of, or attributable to any fact, circumstance or **Wrongful Acts** which have been the subject of any written notice given prior to inception of this Policy and accepted under any prior fiduciary liability or comparable insurance policy or coverage section.

##### B. PENDING OR PRIOR LITIGATION

based upon, arising out of, or attributable to any **Claim** against any **Insured** which was pending on or existed prior to the respective Pending or Prior Date for this Coverage Section set forth in the Coverage Schedule in ITEM 8 of the Declarations, or the same or substantially the same fact, circumstance or **Wrongful Act** underlying or alleged therein.

##### C. CONDUCT

based upon, arising out of or attributable to any deliberately fraudulent act or omission or any willful violation of any law, statute or regulation, committed by such **Insured**, if a final and non-appealable adjudication adverse to such **Insured** in the underlying proceeding establishes such **Insured** committed such a deliberately fraudulent act or omission or willful violation; provided that any acts or omissions which are treated as criminal violations in a foreign jurisdiction that are not treated as criminal violations in the United States of America, the imposition of a criminal fine or other criminal sanction in such foreign jurisdiction will not, by itself, be conclusive proof that deliberately criminal or fraudulent act occurred.

##### D. BODILY INJURY/ PROPERTY DAMAGE

for bodily injury, sickness, emotional distress, mental anguish, humiliation, disease or death of any person or damage to or destruction of any tangible property including loss of use of such damaged or destroyed property; provided this exclusion shall not apply to **Defense Expenses** incurred in connection with an otherwise-covered **Claim** for breach of any fiduciary duties imposed by **ERISA** with respect to any **Plan**.

##### E. OTHER VIOLATIONS OF LAW

for any actual or alleged violation of:

1. any law governing workers' compensation, unemployment insurance, social security, disability benefits, or any similar federal, state or local statutory or regulatory law; provided this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 or Health Insurance Portability and Accountability Act of 1996, as amended;
2. any **Wage and Hour Law**, provided that notwithstanding anything in this Policy to the contrary it shall be the duty of the **Insureds** and not the duty of the Underwriter to defend any **Claim** which is in part excluded from coverage pursuant to this Exclusion E.2.

## F. CONTRACT

based upon, arising out of, or attributable to any actual or alleged liability of an **Insured** under any written contract or agreement; provided this exclusion shall not apply to the extent (i) the **Insured** would have been liable in the absence of such contract or agreement; or (ii) the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Plan** was established.

## G. DISCRIMINATION

for any actual or alleged discrimination in violation of any law other than **ERISA**.

## V. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of any Exclusion set forth in Section IV, the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Act** or knowledge of the chief executive officer or chief financial officer: (i) of the **Organization** shall be imputed to such **Organization**, and (ii) of a **Plan** shall be imputed to such **Plan**.

## VI. NOTICE OF CLAIM AND CIRCUMSTANCES

- A. *Notice of Claim:* The **Insureds** shall give to the Underwriter written notice of any **Claim** made against an **Insured** as soon as practicable after an risk manager or general counsel of an **Organization** (or the functional equivalent), first learns of such **Claim**, but in no event later than ninety (90) days after the expiration of the **Policy Period** or the end of the **Extended Reporting Period**, if exercised. The failure of the **Insureds** to provide notice of a **Claim** as soon as practicable as required by this Section VI.A shall not constitute a coverage defense with respect to such **Claim** unless the Underwriter establishes it was materially prejudiced by such failure.
- B. *Notice of Inquiry/Fiduciary Inquiry/Voluntary Settlement Program Notice:* If an **Insured** elects to seek coverage for a **Fiduciary Inquiry** or a **Voluntary Settlement Program Notice**, the **Insured** shall give notice of such **Fiduciary Inquiry** or **Voluntary Settlement Program Notice** to the Underwriter no later than ninety (90) days after the expiration of the **Policy Period** or **Extended Reporting Period**, if exercised.
- C. *Notice of a Pension Crisis Management Event:* If an **Insured** elects to seek coverage for a **Pension Crisis Management Event**, the **Insured** shall give notice of any such **Pension Crisis Management Event** to the Underwriter no later than thirty (30) days after the **Organization's** risk manager or general counsel (or functional equivalent) first learns of such **Pension Crisis Management Event**. Within sixty (60) days of making any payment of **Pension Crisis Management Event Expenses**, the **Insureds** must provide the Underwriter with a detailed breakdown of all **Pension Crisis Management Event Expenses** for which the **Organization** seeks reimbursement, together with satisfactory proof of payment and any additional information as the Underwriter may reasonably request.
- D. *Notice of Circumstances:* If during the **Policy Period** or the **Extended Reporting Period**, if exercised, the **Insured** first becomes aware of circumstances that could give rise to a **Claim** against the **Insureds** and give written notice of such circumstances to the Underwriter during the **Policy Period** or the **Extended Reporting Period**, if exercised, then any **Claims**



subsequently arising from such circumstances shall be considered to have been made during the **Policy Period**. No coverage is afforded under this Coverage Section for fees, expenses or other loss incurred in connection with such circumstances prior to the time a **Claim** is actually made and reported to the Underwriter.

The **Insureds** shall include with any such notice of circumstance a description of the circumstances, the nature of any potential **Wrongful Act(s)**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **Insureds** first became aware of the **Wrongful Act(s)**.

## VII. CLAIM SETTLEMENT

The **Insureds** agree not to admit any liability for any **Claim**, offer to settle or settle any **Claim**, incur any **Defense Expenses** or otherwise assume any contractual obligation, without the Underwriter's prior written consent, such consent shall not be unreasonably withheld. The Underwriter shall not be liable for or as a result of any offer to settle, settlement, **Defense Expenses**, assumed obligation, admission or stipulated judgment to which it has not given its prior consent; provided, however, if the **Insured** is able to fully and finally settle all **Claims** in their entirety, which are subject to a single retention, for an aggregate amount including **Defense Expenses** not exceeding fifty percent (50%) of such retention, the Underwriter's consent will not be required for the settlement of such **Claims**.

The Underwriter shall have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the Underwriter deems appropriate.

## VIII. CLAIM DEFENSE

The Underwriter shall have the right and duty to defend any **Claim** covered this Coverage Section, even if any of the allegations are groundless, false or fraudulent. The Underwriter's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability applicable to such **Claim**.

The Underwriter shall have the right to select and appoint counsel to defend against any **Claim**. The Underwriter may appoint different defense counsel to represent different **Insureds**, but only if required due to an actual conflict of interest.

## IX. CREATION OF AN ESOP

Notwithstanding anything in this Coverage Section to the contrary, if during the **Policy Period** the **Organization** creates or directly or indirectly acquires an employee stock ownership plan ("ESOP"), the **Organization** shall promptly give to the Underwriter written notice thereof together with such other information requested by the Underwriter. The Underwriter shall, at the request of the **Organization**, provide to the **Organization** a quotation for coverage for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving such ESOP, subject to such terms, conditions and limitations of coverage and such additional premium as the Underwriter in its sole discretion may require. Unless the **Insureds** accept such quotation and pay such additional premium within thirty (30) days after receipt of the quotation, no coverage will be available under this Coverage Section for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving such ESOP.