

In consideration of the premium paid, in reliance upon the statements in the **Application** and subject to the Declarations, limitations, conditions, definitions and other provisions of this Coverage Part, including endorsements hereto, the **Insurer** and the **Insureds** agree as follows:

I. INSURING AGREEMENT

- A. The **Insurer** shall pay, on behalf of an **Insured**, **Loss** on account of a **Claim** first made during the **Policy Period**.
- B. The **Insurer** shall pay, on behalf of an **Insured**, **Voluntary Compliance Program Loss** first ascertained by or assessed against an **Insured** during the **Policy Period**, provided that the payment of any **Voluntary Compliance Program Loss** under this Coverage Part shall not waive any of the **Insurer's** rights under this Policy.

II. DEFINITIONS

Administration means:

- A. advising, counseling, interpreting, providing notice to or handling of records, enrollment, termination or cancellation of, any **Plan** for **Employees, Executives**, participants or beneficiaries;
- B. determining eligibility for or vesting of any benefits.

Claim means any:

- A. written notice of commencement of a fact-finding investigation by the U.S. Department of Labor ("DOL"), the PBGC or any similar governmental authority located outside of the United States;
- B. written demand for monetary or non-monetary (including injunctive) relief, including demands for arbitration, mediation or waiving or tolling of a statute of limitations or **Extradition**;
- C. civil or criminal proceeding, evidenced by:
 - 1. the service of a complaint or similar pleading in a civil proceeding; or
 - 2. the filing of an indictment, information or similar document or an arrest in a criminal proceeding; and
- D. formal administrative or regulatory proceeding, evidenced by the filing of a formal notice of charges or the entry of a formal order of investigation,

against an **Insured** for a **Wrongful Act**, including any appeal therefrom.

The time when a **Claim** shall be deemed first made for the purposes of this Coverage Part shall be the date on which the **Claim** is first made against, served upon or received by the **Insured**.

Defense Costs means that part of **Loss** consisting of:

- A. reasonable costs, charges, fees (including, attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of any **Insured**) incurred in investigating, defending, opposing or appealing any **Claim** or **Voluntary Compliance Program Loss**; or
- B. the premium for appeal, attachment or similar bonds (but the **Insurer** shall be under no obligation to furnish any bond).

Insured means any **Insured Entity, Plan** or **Insured Individual**.

Insured Individual means any:

- A. **Executive** of an **Insured Entity**;
- B. **Employee** of an **Insured Entity** or **Sponsored Plan**; and
- C. past, present or future natural person trustee of a **Sponsored Plan**.

Loss means the amount that an Insured becomes legally obligated to pay on account of any **Claim** including:

- A. compensatory damages;
- B. judgments and settlements, including a judgment or settlement awarding plaintiffs' attorneys fees, provided that with respect to any settlement including plaintiffs' attorneys fees, that portion of the settlement can be demonstrated to be reasonable, taking into consideration the nature of legal action, time and expense involved in prosecuting such action, and the likelihood of a court awarding a similar amount as part of a judgment;
- C. pre and post-judgment interest;
- D. **Defense Costs**;
- E. **Voluntary Compliance Program Loss**;
- F. punitive, exemplary or multiplied portion of multiplied damages, if and to the extent that any such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages; and
- G. The fifteen percent (15%) monetary tax penalty, if arising out of **Claims** covered under this Coverage Part, imposed on an **Insured** under Section 4975 of the Internal Revenue Code of 1986.
- H. the following civil penalties:
 - 1. the 5% or less, or 20% or less, civil penalties imposed upon an Insured as a fiduciary under § 502(i) or (l) of **ERISA**;
 - 2. civil penalties imposed:
 - a. by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions, the United Kingdom Occupational Pensions Regulatory Authority or the Pensions Regulator, pursuant to the Pension Scheme Act of 1993, the Pensions Act of 1995 and the Pensions Act of 2004; or
 - b. by Ireland's Pensions Board or Pensions Ombudsman,
provided that any coverage for such civil penalties applies only if the funds or assets of the pension scheme are not used to fund, pay or reimburse the premium for this Coverage Part;
 - c. upon an **Insured** as a fiduciary under Section 502(c) of ERISA; or
 - d. upon an **Insured** for violation of the privacy provisions of HIPAA.
 - e. upon an **Insured** for violation of the Patient Protection and Affordable Care Act or the Pension Protection Act of 2006.

In determining the most favorable jurisdiction as set forth in paragraph F. above, due consideration shall be given to the jurisdiction with a substantial relationship to the relevant **Insureds** or to the **Claim** giving rise to such damages, fines or penalties, and the **Insurer** shall not challenge any opinion of independent legal counsel (mutually agreed to by the **Insurer** and the Insured) that such damages, fines or penalties are insurable under applicable law.

Loss does not include any portion of such amount that constitutes any:

- 1. amount not insurable under the law pursuant to which this Coverage Part is construed;

2. cost incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
3. tax imposed by law, other than as described in paragraph G. above;
4. fine or penalty imposed by law, other than as described in paragraph H. above;
5. benefits due or would become due under any **Plan**, including the payment of plaintiffs' attorneys fees as a percentage of such benefits or from a common fund established to pay such benefits, unless:
 - a. such benefits are payable as an **Insured Individual's** personal obligation based upon, arising out of or resulting from a **Wrongful Act**; or
 - b. a **Claim** alleges a loss to the **Plan** or to the accounts of such **Plan's** participants resulting from a change in the value of **Plan** investments, even where the amounts sought or recovered by the plaintiffs in such **Claim** are described in any way as "benefits"; or
6. cost incurred to clean up, remove, contain, treat, detoxify or neutralize **Pollutants**.

Plan means:

- A. any **Sponsored Plan**; and
- B. any government mandated workers compensation, disability benefits, social security or unemployment insurance for **Employees** and **Executives**.

Sponsored Plan means:

- A. any employee benefit plan, pension benefit plan or welfare benefit plan, as defined in and subject to **ERISA**, including any **VEBA**, which is operated by an **Insured Entity** or an **Insured Entity** and a labor organization solely for the benefit of **Employees** or **Executives** of an **Insured Entity**; or
- B. any other employee benefit plan or program similar to those described in paragraph A., but which is not subject to **ERISA**, including any fringe benefit or excess benefit plan such as a deferred compensation plan, supplemental executive retirement plan or top hat plan,

provided that **Sponsored Plan** shall not include any employee stock ownership plan created after inception of the **Policy Period**.

VEBA means any Voluntary Employees' Beneficiary Associations as defined in Section 501(c)(9) of the Internal Revenue Code of 1986.

Voluntary Compliance Program means any voluntary compliance resolution program or similar voluntary settlement program administered by the Internal Revenue Service or DOL or any other domestic or foreign governmental authority. Such programs include 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 Correspondence Program, Delinquent Filer Voluntary Compliance Program and Voluntary Fiduciary Correction Program.

Voluntary Compliance Program Loss means fees, fines, penalties or sanctions paid by an Insured to a governmental authority under a Voluntary Compliance Program for a Plan's inadvertent non-compliance with any law. However, **Voluntary Compliance Program Loss** shall not include any costs to correct any noncompliance.

Wrongful Act means any:

- A. actual or alleged breach of the responsibilities, obligations or duties imposed by **ERISA** upon fiduciaries of the **Sponsored Plan**;

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- B. negligent act, error or omission in the **Administration** of any **Plan** committed, attempted or allegedly committed or attempted by an **Insured** in his or its capacity as such;
 - C. other matter claimed against an **Insured Individual** solely by reason of the **Insured Individual's** serving as a fiduciary of a **Sponsored Plan**; or
 - D. negligent act, error or omission committed, attempted or allegedly committed or attempted by an **Insured Individual** in performing any functions identified in **ERISA** Section 3(21)(A) as not being the functions of a fiduciary, and commonly referred to as "settlor" functions.
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III. EXCLUSIONS

This Insurance does not apply to **Loss** on account of that portion of a **Claim**:

A. Liability Assumed Under Contract

Based upon, arising out of or resulting from any liability of others assumed by an **Insured** under any contract or agreement, provided that this Exclusion A. shall not apply to **Loss** to the extent that:

1. an **Insured** would have been liable for such Loss in the absence of such contract or agreement; or
2. the liability assumed was under the agreement or declaration trust pursuant to which a **Plan** was established; and

B. Workers Compensation, Disability Benefits, Social Security, Unemployment

Based upon, arising out of or resulting from any failure to comply with any obligation under any workers compensation, disability benefits, social security or unemployment insurance law, provided that this Exclusion B. shall not apply to any **Wrongful Act** based upon, arising out of or resulting from:

1. COBRA; or
2. HIPAA;

With respect to the Fiduciary Liability Coverage Part, the following exceptions shall apply to Section III. **EXCLUSIONS** of the Common Policy Terms and Conditions:

1. Exclusion C. ERISA shall not apply to this Coverage Part; and
 2. Exclusion E. Pollution shall not apply to any **Claim**:
 - a. brought by or on behalf of a participant in, or beneficiary of, any Sponsored Plan based upon, arising out of or resulting from the diminution in value of any securities owned by such **Sponsored Plan** in any organization, where such diminution in value is allegedly the result of the matters described in Exclusion E. Pollution; and
 - b. for which an **Insured Individual** is not indemnified by an **Insured Entity** because of such **Insured Entity's** Financial Impairment.
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IV. CONDITIONS

A. Retention

No retention shall apply to any:

1. **Voluntary Compliance Program Loss**;
2. **Loss** constituting civil penalties as described in section II. DEFINITIONS, **Loss**, H.2.c. through H.2.e.; or
3. **Loss** constituting penalties as described in section II. DEFINITIONS, **Loss**, **G**.

B. Limit of Liability

1. The **Voluntary Compliance Program Loss** Limit stated in Item 3 of the Declarations of this Coverage Part represents the **Insurer's** maximum liability for all **Voluntary Compliance Program Loss**, including **Defense Costs** related to the assessment or correction of a **Plan's** non-compliance with any **Voluntary Compliance Program**, payable under this Coverage Part during the **Policy Period**.
2. The **ERISA** Civil Penalties Limit stated in Item 3 of the Declarations of this Coverage Part represents the **Insurer's** maximum liability for all civil penalties described in section II. DEFINITIONS, **Loss**, H.2.c. ("ERISA Civil Penalties") payable under this Coverage Part during the **Policy Period**.
3. The HIPAA Privacy Civil Penalties Limit stated in Item 3 of the Declarations of this Coverage Part represents the Insurer's maximum liability for all civil penalties described in in section II. DEFINITIONS, **Loss**, H.2.d. ("HIPAA Privacy Civil Penalties") payable under this Coverage Part during the **Policy Period**.
4. The Patient Protection and Affordable Care Act or Pension Protection Act of 2006 Penalties Limit stated in Item 3 of the Declarations of this Coverage Part represents the Insurer's maximum liability for all civil penalties described in in section II. DEFINITIONS, **Loss**, H.2.e. ("Pension Protection and Affordable Care Act or Pension Protection Act of 2006 Penalties") payable under this Coverage Part during the **Policy Period**.
5. The IRS Section 4975 Tax Penalties Limit stated in Item 3 of the Declarations of this Coverage Part represents the Insurer's maximum liability for all civil penalties described in in section II. DEFINITIONS, **Loss**, G. ("IRS Section 4975 Tax Penalties") payable under this Coverage Part during the **Policy Period**.

All amounts set forth above shall be part of, and not in addition to, the Limit of Liability set forth in Item 3 of the Declarations of this Coverage Part.

C. Reporting

The **Insured** shall notify the **Insurer** of **Voluntary Compliance Program Loss** as soon as practicable after such **Voluntary Compliance Program Loss** is first ascertained by or assessed against an **Insured**. However, in no event shall any notice be provided later than:

1. if this Coverage Part expires (or is otherwise terminated) without being renewed with the **Insurer**, 90 days after the effective date of expiration or termination of this Coverage Part; or
2. the expiration date of the ERP, if applicable.

D. Other Insurance

With the exception of insurance which is written specifically as excess of the Limit of Liability of this Coverage Part, this Coverage Part shall be excess of and shall not contribute with any valid and collectible insurance providing coverage for **Loss** for which this Coverage Part provides coverage, provided that any payment by an **Insured** of a retention or deductible under any such other insurance shall reduce the Retention under this Coverage Part by the amount of such payment which would otherwise have been **Loss** under this Coverage Part.

E. Priority of Payments

In the event a liquidation or reorganization proceeding is commenced by or against an **Insured Entity** pursuant to United States bankruptcy law, the **Insurer** shall first pay **Loss** incurred by an **Insured Individual** and the **Plans** and then pay **Loss** incurred by any **Insured Entity**.

F. Changes in a Plan

- A. If the Pension Benefit Guaranty Corporation ("PBGC") becomes the trustee of a **Plan** before or after the inception date of this Coverage Part, coverage for such **Plan** shall continue until termination of this Coverage Part for those who were **Insureds** at the time the PBGC became the trustee, but only with respect to **Wrongful Acts** which occurred prior to the effective date the PBGC became the trustee; or

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- B. If an **Insured Entity** terminates a **Plan** before or after the inception date of this Coverage Part, coverage for such **Plan** shall continue until termination of this Coverage Part for those who were **Insureds** at the time of such **Plan** termination or who would have been an **Insured** at the time of such termination if this Coverage Part had been in effect, but only with respect to **Wrongful Acts** which occurred prior to or after the date the **Plan** was terminated.

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