

## FIDUCIARY LIABILITY COVERAGE SECTION

In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions Section, and the limitations, conditions, provisions and other terms of this Coverage Section, the Company and the "insureds" agree as follows:

### A. Insuring Clause

#### Fiduciary Liability Coverage Insuring Clause

The Company shall pay, on behalf of the "insureds", "loss" on account of any "fiduciary claim" first made against the "insureds" during the "policy period", or, if exercised, during the Extended Reporting Period, for a "wrongful act" committed, attempted or allegedly committed or attempted before or during the "policy period" by such "insureds", or by any person for whose "wrongful acts" the "insureds" are legally responsible, but only if such "claim" is reported to the Company in writing in the manner and within the time provided in the General Terms and Conditions. However, the Company will have no obligation to pay any "claim" because of a "wrongful act" to which this insurance does not apply.

### B. Definitions

When used in this Coverage Section:

1. "Administration" means:

- (a) advising, counseling or giving notice to "employees", participants or beneficiaries with respect to any "plan";
- (b) providing interpretations to "employees", participants or beneficiaries with respect to any "plan"; or
- (c) handling of records or effecting enrollment, termination or cancellation of "employees", participants or beneficiaries under any "plan".

2. "Claim" means any "fiduciary claim".

3. "Defense Costs" means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees or benefits of the "employees" of the "organization") incurred in defending any "claim" and the premium for appeal, attachment or similar bonds.

The salaries and expenses of the Company employees are not included in "defense costs".

4. "Employee" means any natural person whose labor or service is engaged by and directed by the "organization" or any "plan", including any part-time, seasonal, leased or temporary "employees" or volunteers. "Employee" shall not include any independent contractor.
5. "ERISA" means the Employee Retirement Income Security Act of 1974, including amendments thereto or the common or statutory law of the United States of America or any State.
6. "Executive" means any natural person who was, now is or shall become:
- (a) a duly elected or appointed director, officer, "manager" or in-house general counsel of any "plan" or any "organization" chartered in the United States of America; or
  - (b) a holder of a position equivalent to any position described in (a) above in any "organization" that is chartered in any jurisdiction other than the United States of America.
7. "Fiduciary Claim" means:
- (a) a written demand for monetary damages or non-monetary relief;
  - (b) a civil proceeding commenced by the service of a complaint or similar pleading;
  - (c) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document or by the entry of a formal investigative order or similar document; or

(d) a written notice of commencement of a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority,

against any "insured" for a "wrongful act", including any appeal therefrom.

Except as may otherwise be provided in Subsection E. Limit of Liability and Retention, of this Coverage Section, or Subsection D. Extended Reporting Period or Subsection F. Reporting and Notice of the General Terms and Conditions, a "fiduciary claim" will be deemed to have first been made when such "fiduciary claim" is commenced as set forth in this definition (or, in the case of a written demand or notice, when such demand or notice is first received by an "insured").

8. "Insured" means the "organization", any "plan" and any "insured person".
9. "Insured Person" means any past, present or future "executive", "employee" or natural person trustee of the "organization" or of the "sponsored plan".
10. "Loss" means the amount that any "insured" becomes legally obligated to pay on account of any covered "claim", including but not limited to damages (including punitive or exemplary damages, or the multiple portion of any multiplied damage award), judgments, settlements, pre-judgment and post-judgment interest, and "defense costs".

"Loss" does not include:

- (a) any amount not indemnified by the "organization" for which the "insured" is absolved from payment by reason of any covenant, agreement or court order;
- (b) any costs incurred by an "organization" or "plan" to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (c) any amount incurred by an "insured" in the defense or investigation of any action, proceeding, investigation or demand that is not then a "claim" even if
  - (i) such amount also benefits the defense of a covered "claim", or
  - (ii) such action, proceeding, investigation or demand subsequently gives rise to a "claim";

(d) taxes, fines or penalties, except:

- (i) as provided above with respect to punitive or exemplary damages or the multiple portion of any multiplied damages;
- (ii) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an "Insured" as a fiduciary under Section 502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended;

- (e) any amount allocated to non-covered loss pursuant to Subsection G., (Allocation), of this Coverage Section; or
- (f) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive or exemplary damages or the multiple portion of any multiplied damages.

11. "Plan" means:

- (a) any "sponsored plan"; and
- (b) any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for "employees".

12. "Sponsored Plan" means:

- (a) any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each are defined in "ERISA", which is operated solely by the "organization" or jointly by the "organization" and a labor organization solely for the benefit of the "employees" or "executives" of the "organization" and which existed on or before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions or which is created or acquired after such inception date; provided that any coverage with respect to any such plan created or acquired during the "policy period" shall apply only for "wrongful acts" committed, attempted, or allegedly committed or attempted after the effective date of such creation or acquisition and shall be subject to Subsection I., Changes in Exposure, of the General Terms and Conditions Section;

(b) any other employee benefit plan or program not subject to "ERISA" which is sponsored solely by the "organization" for the benefit of the "employees" or "executives", including any fringe benefit or excess benefit plan;

(c) any other plan or program otherwise described in paragraphs (a) or (b) above while such plan or program is being actively developed, formed or proposed by the "organization" prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this Coverage Section for any "claim" against an "insured" in a settlor or similar uninsured capacity with respect to any plan or program; and

(d) any other plan, fund, or program specifically included as a "sponsored plan" by endorsement to this Coverage Section.

"Sponsored plan" shall not include any employee stock ownership plan or any multi-employer plan.

13. "Wrongful Act" means with respect to any "plan":

(a) any breach of the responsibilities, obligations or duties imposed by "ERISA" upon fiduciaries of the "sponsored plan" in their capacity as such fiduciaries;

(b) any negligent act, error or omission in the "administration" of any "plan" committed, attempted, or allegedly committed or attempted by an "insured" in the "insured's" capacity as such; or

(c) any other matter claimed against an "insured" solely by reason of the "insured's" service as a fiduciary of any "sponsored plan".

## C. Exclusions

### Applicable to All Insuring Clauses

1. The Company shall not be liable for "loss" on account of any "claim" against an "insured":

(a) based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or "wrongful act" that, before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, was the subject of any notice given under any Policy or Coverage Section of which this Coverage Section is a direct or indirect renewal or replacement;

(b) based upon, arising from or in consequence of any demand, suit, or other proceeding pending against, or order, decree or judgment entered for or against any "insured", on or prior to the applicable Pending or Prior Date set forth in Item 4 of the Declarations for this Coverage Section, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;

(c) based upon, arising from or in consequence of damages from the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any "pollutants" into or upon the land, atmosphere, watercourse or any body of water or for any loss, cost or expense arising out of any environmental liability statutes or regulations, governmental or any other request, demand or order, including but not limited to testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing any "pollutants"; including but not limited to any "claim" for financial loss to any "organization" or "plan" or creditors based upon, arising from or in consequence of any matter described in this Exclusion 1(c); provided that this Exclusion 1(c) shall not apply to (A) any "claim" by or on behalf of a beneficiary of or participant in any "sponsored plan" based upon, arising from or in consequence of the diminution in value of any securities owned by the "Sponsored Plan" in any organization other than the "organization", if such diminution in value is allegedly as a result of the matters described above in this Exclusion 1(c), or (B) "loss" (other than fees and expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing "pollutants") incurred by an "insured person" for which the "organization" is not permitted by common or statutory law to indemnify or for which the "organization" is not able to indemnify by reason of "financial impairment";

(d) for any actual or alleged bodily injury, mental anguish, emotional distress, sickness, disease, including the transmission of any communicable disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;

- (e) based upon, arising from or in consequence of the liability of others assumed by any "insured" under any written or oral contract or agreement; provided that this Exclusion 1(e) shall not apply to the extent that:
    - (i) an "insured" would have been liable in the absence of the contract or agreement; or
    - (ii) the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the "plan" was established;
  - (f) for the failure of the "insured" to comply with any workers' compensation, unemployment insurance, social security or disability benefits law or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law, except the Consolidated Omnibus Budget Reconciliation Act of 1985 and any amendments to or any rules or regulations promulgated under such Act;
  - (g) made against a "subsidiary" or "affiliate" or an "insured person" of such "subsidiary" or "affiliate" for any "wrongful act" committed, attempted, or allegedly committed or attempted during any time when such entity was not a "subsidiary" or "affiliate";
  - (h) based upon, arising from, or in consequence of:
    - (i) the committing of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such "insured," as evidenced by a final and non-appealable judgment or adjudication, or, in a criminal proceeding, as evidenced by any plea of guilty, nolo contendere or no contest, or any similar plea; or
    - (ii) such "insured" having gained in fact any profit, remuneration or advantage to which such "insured" was not legally entitled;
  - (i) based upon, arising from or in consequence of any employee stock ownership plan or any multi-employer plan created before or during the "policy period".
2. The Company shall not be liable for "loss" other than "defense costs":
- (a) which constitutes the return or reversion to an employer of any contribution or asset of a "plan";
  - (b) which constitutes (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, except to the extent that:
    - (1) an "insured" is a natural person and the benefits are payable by such "insured" as a personal obligation; and
    - (2) recovery for the benefits is based upon a covered "wrongful act"; or
  - (c) which is based upon, arising from or in consequence of the failure to collect an employer's contributions owed to a "plan" unless the failure is because of the negligence of any "insured".
3. Severability of Exclusions
- (a) No fact pertaining to or knowledge possessed by any "insured person" shall be imputed to any other "insured person" for the purpose of applying Exclusion 1.(h) of this Coverage Section.
  - (b) Only facts pertaining to and knowledge possessed by any "executive" shall be imputed to such "organization" or "plan" for the purpose of applying Exclusion 1.(h) of this Coverage Section.
- D. Coordination with Employment Practices Liability Coverage Section**
- Any "loss" otherwise covered by both
- (i) this Coverage Section and
  - (ii) any Employment Practices Liability Coverage Section or Policy issued by the Company or by any affiliate of the Company (an Employment Practices Liability Coverage),
- first shall be covered as provided in, and shall be subject to the Limit of Liability and Retention applicable to the Employment Practices Liability Coverage. Any remaining "loss" otherwise covered by this Coverage Section which is not paid under the Employment Practices Liability Coverage shall be covered as provided in, and shall be subject to the Limit of Liability and Retention applicable to this Coverage Section; provided the Retention applicable to such "loss" under this Coverage Section shall be reduced by the amount of "loss" otherwise covered by this Coverage Section which is paid by the "insureds" as the Retention under such Employment Practices Liability Coverage.

## E. Limit of Liability and Retention

1. The Company's maximum aggregate liability for all "loss" on account of all "claims" first made during each "policy year", whether covered under one or more Insuring Clauses, shall be the Limit of Liability for each "policy year" set forth in Item 2 of the Declarations for this Coverage Section.
2. Solely in the event that the Defense Outside the Limits of Liability Option is purchased as indicated in Item 5 of the Declarations of this Coverage Section, "defense costs" shall be in addition to, and not part of, the applicable Limits of Liability set forth in Item 2 of the Declarations for this Coverage Section, and payment of "defense costs" by the Company shall not reduce or exhaust such applicable Limits of Liability; provided, however, that when such applicable Limits of Liability are exhausted by payment of "loss" other than "defense costs", any obligation of the Company to pay "defense costs" or to defend or continue to defend any "claim" shall cease.

If the Defense Outside the Limits of Liability Option is not purchased as indicated in Item 5 of the Declarations of this Coverage Section, "defense costs" are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations of this Coverage Section and payment of "defense costs" by the Company shall reduce, and may exhaust, such Limits of Liability. When the Limits of Liability are exhausted by payment of "defense costs" or other "loss", any obligation of the Company to pay "defense costs" or to defend or continue to defend any "claim" shall cease.

3. No Retention shall apply to any "loss" under this Coverage Section incurred by an "insured person" if such "loss" cannot be indemnified by an "organization" or "plan" because such "organization" or "plan" is either not legally permitted or required to indemnify, or is unable to indemnify, such "insured person" by reason of "financial impairment". The Company's liability for all other covered "loss" (as determined by Subsection G. Allocation of this Coverage Section, if applicable) shall apply only to "loss" on account of each "claim" which is excess of the applicable Retention set forth in Item 3 of the Declarations for this Coverage Section. Such Retention shall be reduced only by "loss" otherwise covered under this Coverage Section and shall be borne by the "insureds" uninsured and at their own risk.

4. If different parts of a single "claim" are subject to different Retentions, the applicable Retentions will be applied separately to each part of such "claim", but the sum of such Retentions shall not exceed the largest applicable Retention.
5. All "related claims" shall be treated as a single "claim" first made on the date the earliest of such "related claims" was first made, or on the date the earliest of such "related claims" is treated as having been made in accordance with Subsection F.1.(b) Reporting and Notice of the General Terms and Conditions, regardless of whether such date is before or during the "policy period".
6. The Limit of Liability available during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's maximum aggregate Limit of Liability for all "loss" on account of all "claims" first made during the immediately preceding "policy year".

## F. Defense and Settlement

1. The Company shall have the right and duty to defend any "claim" covered by this Coverage Section, even if any of the allegations in such "claim" are groundless, false or fraudulent. Defense counsel shall be selected by the Company. The Company's duty to defend any "claim" shall cease upon exhaustion of the applicable Limit of Liability.
2. The Company may make any investigation it deems necessary and may, with the consent of the "insured", make any settlement of any "claim" it deems expedient.

Solely in the event that the Defense Outside the Limits of Liability Option is purchased as indicated in Item 5 of the Declarations of this Coverage Section, if an "insured" in any "claim" withholds consent to any settlement acceptable to the claimant in accordance with the Company's recommendation (a Proposed Settlement), the "insureds" will thereafter be responsible for defending such "claim" at their own expense and, subject in all events to the Company's maximum Limit of Liability, the Company's liability for "loss" with respect to any such "claim" will not exceed the amount of the Proposed Settlement plus "defense costs" incurred up to the date of the "insured's" refusal to consent to the Proposed Settlement.

If the Defense Outside the Limits of Liability Option is not purchased as indicated in Item 5 of the Declarations of this Coverage Section, in the event an "insured" in any "claim" withholds consent to a Proposed Settlement, the Company's liability with respect to such "claim" shall not exceed:

- (a) the amount of the Proposed Settlement plus "defense costs" incurred up to the date of the "insured's" refusal to consent to the Proposed Settlement; plus
  - (b) seventy percent (70%) of any "loss", including "defense costs", in excess of the amount referenced in paragraph (a) above, incurred in connection with such "claim"; subject in all events to the applicable Retention and Limits of Liability for such "claim". The remaining thirty percent (30%) of "loss", including "defense costs", in excess of the amount referenced in paragraph (a) above shall be borne by the "insureds" uninsured and at their own risk, notwithstanding anything to the contrary contained in Subsection G. Allocation.
3. The "insureds" agree not to settle or offer to settle any "claim", incur any "defense costs" or otherwise assume any contractual obligation or admit any liability with respect to any "claim" without the Company's prior written consent, which shall not be unreasonably withheld. The Company shall not be liable for any element of "loss" incurred, for any obligation assumed, or for any admission made, by any "insured" without the Company's prior written consent.
4. The Company will have no obligation to pay "loss", including "defense costs", or to defend or continue to defend any "claim" after the maximum Limit of Liability applicable to the "policy year" in which such "claim" was first made or is deemed to have first been made has been exhausted. If the Company's Limit of Liability in any "policy year" is exhausted, the Policy premium applicable to such "policy year" will be fully earned.

5. If the Combined Maximum Aggregate Limit of Liability for all Liability Coverage Sections is elected, as set forth in Item 3 of the Declarations of the General Terms and Conditions, then the Company will have no obligation to pay "loss", including "defense costs", or to defend or continue to defend any "claim" after the Company's Combined Maximum Aggregate Limit of Liability applicable to the "policy year" in which such "claim" was first made or is deemed to have first been made has been exhausted. If the Company's Combined Maximum Aggregate Limit of Liability in any "policy year" is exhausted, the Policy premium applicable to such "policy year" will be fully earned.
6. The "insureds" agree to provide the Company with all information, assistance and cooperation which the Company reasonably requires and agree that in the event of a "claim" the "insureds" will do nothing that could prejudice the Company's position or its potential or actual rights of recovery.

#### **G. Allocation**

1. If both "loss" covered under this Coverage Section and loss not covered under this Coverage Section are incurred by the "insureds" on account of any "claim" because such "claim" against the "insureds" includes both covered and non-covered matters, then coverage under this Coverage Section with respect to such "claim" shall apply as follows:
  - (a) "defense costs": One hundred percent (100%) of reasonable and necessary "defense costs" incurred by the "insured" on account of such "claim" will be considered covered "loss"; and
  - (b) "loss" other than "defense costs": All remaining "loss" incurred by the Insured on account of such "claim" shall be allocated by the Company between covered "loss" and non-covered "loss" based on the relative legal and financial exposures of the "insureds" to covered and non-covered matters and, in the event of a settlement in such "claim", also based on the relative benefits to the "insureds" from such settlement.

2. If the "insureds" and the Company cannot agree on an allocation of "loss":

- (a) no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- (b) the Company, if requested by the "insureds", shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the "insureds", one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators.

#### H. Other Insurance

If any "loss" under this Coverage Section is insured under any other valid insurance policy(ies), then this Coverage Section shall cover such "loss", subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such "loss" is in excess of the applicable retention (or deductible) and Limit of Liability under such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Coverage Section. Any payment by "insureds" of a Retention or deductible under such other insurance shall deplete, by the amount of such payment which would otherwise be covered under this Coverage Section, the applicable Retention under this Coverage Section.

#### I. Termination of Plan

If an "organization" terminates a "plan" before or after the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, coverage under this Coverage Section with respect to such terminated "plan" and its "insureds" shall continue until termination of this Coverage Section for those who were "insureds" prior to or at the time of such "plan" termination or who would have been "insureds" at the time of such termination if this Coverage Section had then been in effect. Such continuation of coverage shall apply with respect to "claims" for "wrongful acts" committed, attempted, or allegedly committed or attempted prior to or after the date the "plan" was terminated.

#### J. Representations and Severability

In issuing this Coverage Section the Company has relied upon the statements, representations and information in the "application". All of the "insureds" acknowledge and agree that all such statements, representations and information

- (a) are true and accurate,
- (b) were made or provided in order to induce the Company to issue this Coverage Section, and
- (c) are material to the Company's acceptance of the risk to which this Coverage Section applies.

In the event that any of the statements, representations or information in the "application" are not true and accurate, this Coverage Section shall be void with respect to

- (i) any "insured person" who knew as of the effective date of the "application" the facts that were not truthfully and accurately disclosed (whether or not the "insured person" knew of such untruthful disclosure in the "application"),
- (ii) any "organization" or "plan" to which knowledge of such facts is imputed, and
- (iii) any "organization" to the extent it indemnifies an "insured person" who had knowledge of such facts, whether or not knowledge of such facts is also imputed the "organization". For purposes of the preceding sentence:
  1. the knowledge of an "insured person" who is a past, present, or future Chief Financial Officer, in-house General Counsel, Chief Executive Officer, "Manager", "Executive", President or Chairperson of any "organization" shall be imputed to such "organization" and its "subsidiaries" and their respective "plans";
  2. the knowledge of the person(s) who signed the "application" for this Coverage Section shall be imputed to all "organizations", "subsidiaries" and their respective "plans"; and
  3. except as provided in 1. above, the knowledge of an "insured person" shall not be imputed to any other "insured".

#### K. Certified Acts of Terrorism

It is hereby understood and agreed that this Coverage Section includes coverage on account of any "claim" for "wrongful acts" applicable to this Coverage Section on account of any "Certified Act of Terrorism".

**"Certified Act of Terrorism"** means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The federal Terrorism Risk Insurance Act sets forth the following criteria for a Certified Act of Terrorism:

1. The act resulted in insured losses in excess of \$5 million in the aggregate attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and the Company has met the Company's deductible under the Terrorism Risk Insurance Act, the Company shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such cases insured losses up to that amount are subject to pro rata allocation in accordance with the procedures established by the Secretary of Treasury.

The terms and limitations of any terrorism coverage provided herewith, or the inapplicability or omission of terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Section or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War and Military Action Exclusion.