THE HARTFORD PREMIER DEFENSE FIDUCIARY LIABILITY POLICY℠

Table of Contents

In consideration of the payment of the premium and subject to all the terms, conditions and limitations of this Policy, the Insurer and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) FIDUCIARY LIABILITY COVERAGE

The Insurer will pay **Loss** on behalf of the **Insureds** arising from a **Claim** first made during the **Policy Period** or **Extended Reporting Period**, if applicable, against the **Insureds** for a **Wrongful Act** (other than a **Managed Care Wrongful Act** or a **Settlement Program Wrongful Act**).

(B) MANAGED CARE LIABILITY COVERAGE

The Insurer will pay **Loss** on behalf of the **Insureds** arising from a **Claim**, first made during the **Policy Period** or **Extended Reporting Period**, if applicable, against the **Insureds** for a **Managed Care Wrongful Act**.

(C) VOLUNTARY SETTLEMENT PROGRAM COVERAGE (ELECTIVE)

The Insurer will pay **Settlement Fees** and **Defense Costs** on behalf of the **Insureds** arising from a **Settlement Program** for which a **Settlement Program Notice** is first received by the Insurer during the **Policy Period** or **Extended Reporting Period**, if applicable, against the **Insureds** for a **Settlement Program Wrongful Act**.

II. EXTENSIONS

(A) LABOR MANAGEMENT RELATIONS ACT COVERAGE

In the event that, and solely during the time that, coverage is provided for a **Claim** under Section **I. INSURING AGREEMENT (A)** of this Policy, then, with respect to such **Claim**, this Policy will also pay on behalf of the **Insured** all **Loss** incurred by an **Insured** arising from an allegation that such **Insured** violated Section 301 of the Labor Management Relations Act relating to alleged violations of collectively bargained contracts in connection with an **Sponsored Plan**.

(B) FALSE ALLEGATION PROTECTION

If, with respect to any **Claim** covered under this Policy:

(1) any **Insured Person** who was alleged to be a fiduciary of a **Sponsored Plan** is subsequently determined not, in fact, to be a fiduciary of such **Sponsored Plan**; or

(2) a **Sponsor Entity** that was alleged to be the sponsor of a **Sponsored Plan** is subsequently determined not, in fact, to be the sponsor of such **Sponsored Plan**;

then the Insurer will not seek the recovery of amounts paid on behalf of such **Insured** prior to such determination.

III. EXCLUSIONS

(A) The Insurer will not pay **Loss** in connection with any **Claim** made against any **Insured**:

(1) Bodily Injury/Property Damage

for any actual or alleged bodily injury, mental anguish, emotional distress, sickness, disease, or death of any person, or for damage to or destruction of any tangible property, including loss of use thereof; provided, however, this exclusion will not apply to:

(a) the coverage afforded for a **Managed Care Wrongful Act** under Section **I. INSURING AGREEMENT (B)** of this Policy; or

(b) **Defense Costs** incurred in the defense of a **Claim** for a violation of **ERISA** by an **Insured**;

(2) Violation of Law Exclusion

based upon, arising from, or in any way related to any actual or alleged failure of the **Insured** to comply with any law, rule or regulation governing any government-mandated insurance program (other than such a failure that is a negligent act, error or omission in the **Administration** of any plan), workers' compensation, unemployment insurance or compensation, social security benefits, disability benefits, or any similar law; provided, however, this exclusion will not apply to any **Loss** resulting from otherwise covered violations of **HIPAA** or **COBRA**;

(3) Conduct Exclusion

based upon, arising from, or in any way related to:

(a) the gaining of any profit, remuneration or financial advantage to which such **Insured** is not legally entitled if a final and non-appealable adjudication adverse to such **Insured** in the underlying proceeding (other than a declaratory proceeding brought by or against the Insurer) establishes such **Insured** was not in fact legally entitled to such profit, remuneration or financial advantage; or

(b) any deliberately fraudulent or deliberately criminal act or omission or any intentional violation of any statute, regulation or law by such **Insured** if a final and non-appealable adjudication adverse to such **Insured** in the underlying proceeding (other than a declaratory proceeding brought by or against the Insurer) establishes such conduct.

For the purposes of applying the exclusions set forth in Section **III. EXCLUSIONS**, **(A)**, (i) no **Wrongful Act** or knowledge of any **Insured Person** will be imputed to any other **Insured Person**, and (ii) only the **Wrongful Acts** and knowledge of the chief executive officer, chief financial officer, in-house general counsel or head of benefits within the Human Resources Department (or any equivalent position thereof), of the **Named Entity** will be imputed to the **Entities**.

(B) The Insurer will not pay **Loss** in connection with any **Claim** made against any **Insured** based upon, arising from, or in any way related to any prior or pending demand, investigation, litigation, suit or proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the applicable **Continuity Date** in ITEM 9 of the Declarations, or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand, investigation, litigation, suit or proceeding.

IV. INTERRELATIONSHIP OF CLAIMS

(A) All **Claims** involving the same **Wrongful Act** or any **Interrelated Wrongful Acts** will be deemed to be a single **Claim**, and only one **Retention** will be applicable to such single **Claim**, for all purposes under this Policy, first made on the earliest date of the following:

(1) the earliest date that any such **Claim** was first made against the **Insured**; or

(2) the earliest date that notice of any **Wrongful Act** or **Interrelated Wrongful Act** alleged in any such **Claim** was given:

(a) to the Insurer pursuant to Section V.; or

(b) under any other fiduciary liability insurance or employment benefit insurance commencing before the **Inception Date**, regardless of whether such policy was issued by the Insurer; provided, however, that the insurer of such policy does not reject such notice as invalid.

(B) Under no circumstances will a single lawsuit or proceeding be considered more than one **Claim** subject to more than one **Retention**.

V. NOTICE

(A) Notice of Claims

(1) As a condition precedent to coverage, the **Insureds** will give the Insurer written notice of any **Claim** as soon as practicable after the chief executive officer, chief financial officer, in-house general counsel, risk manager or head of benefits within the Human Resources Department (or any equivalent position) of the **Named Entity** first becomes aware of such **Claim**, but in no event later than sixty (60) days after the termination of the **Policy Period** or **Extended Reporting Period**, if applicable.

(2) Notwithstanding the foregoing, if the Insurer terminates this Policy for nonpayment of premium, the **Insured** will give the Insurer written notice of any **Claim** prior to the effective date of such termination.

(B) Late Notice – Prejudice Required

In the event that the **Insureds** fail to provide timely notice of a **Claim** pursuant to sub-section V.(A)(1), above, the Insurer will not be entitled to deny coverage based upon such untimely notice unless the Insurer can demonstrate its interests were materially prejudiced by reason of such untimely notice.

(C) Notice of Potential Claim

If during the **Policy Period** an **Insured** becomes aware of any **Wrongful Acts** occurring before or during the **Policy Period** that may reasonably be expected to give rise to a **Claim**, and if written notice of such **Wrongful Acts** is given to the Insurer during the **Policy Period**, including the nature of the **Wrongful Acts** and the reasons for anticipating such **Claim**, with full particulars as to the dates, persons and entities allegedly involved, then any **Claim** subsequently arising from such **Wrongful Acts** will be deemed to be a **Claim** first made during the **Policy Period** on the date that the Insurer receives the above notice; provided that any such subsequent **Claim** is reported to the Insurer as specified in sub-section V.(A)(1), above. No coverage will be provided under this Policy for any amounts incurred as a result of any **Wrongful Acts** prior to the time such subsequent **Claim** is first made.

(D) Notices to the Insurer/Insureds

Except as otherwise provided in this Policy, all notices to the Insurer under any provision of this Policy will be in writing and given by email, prepaid express courier or certified mail properly addressed to the appropriate party. Notice to the Insurer pursuant to sub-sections V.(A) and V.(C) will be sent to the address specified in ITEM 10(A) of the Declarations. All other notices to the Insurer required by this Policy or in connection with this Policy will be sent to the address specified in ITEM 10(B) of the Declarations. Notice to the **Insureds** will be sent to the **Named Entity** at the address set forth in ITEM 1 of the Declarations. Notice will be deemed to be received and effective on the date such notice was transmitted, subject to proof of such transmittal.

VI. CLAIM-RELATED RIGHTS AND DUTIES

(A) Defense and Settlement

(1) It will be the duty of the **Insureds**, and not the Insurer, to defend any **Claim**.

(2) The **Insureds** must not admit or assume any liability, make any settlement offer, enter into any settlement agreement, stipulate to any judgment, assume any contractual obligation or otherwise incur any **Loss** (including, without limitation, any **Defense Costs** or **Settlement Fees**) without the express prior written consent of the Insurer, such consent not to be unreasonably withheld or delayed.

(3) Notwithstanding sub-section VI.(A)(2), above:

(a) The Insurer may, in its sole discretion, provide a written waiver of the requirement for such prior written consent for amounts of **Defense Costs** incurred within thirty (30) days prior to the **Insured's** written notification to the Insurer of a **Claim** if such amounts are determined by the Insurer to be reasonably necessary to mitigate further **Loss** that would be covered under this Policy.

(b) The **Insureds** do not need the Insurer's prior written consent to fully and finally dispose of a **Claim** (or **Claims** subject to a single **Retention**) with all involved parties if the amount of all covered **Loss** incurred in connection with such disposition (including, without limitation, **Defense Costs**

and **Settlement Fees**) does not exceed the amount of the applicable **Retention**. The **Insured** will provide prompt notice to the Insurer of such disposition and provide any information in connection therewith as may be requested by the Insurer.

(4) The Insurer will not be liable for any **Loss** (including, without limitation, any **Defense Costs** or **Settlement Fees**) incurred as a result of any admission, assumption, offer, agreement, settlement, stipulation, or assumed obligation, or for any other element of **Loss** incurred, to which it has not consented in writing or for which it has not provided a written waiver of the prior written consent requirement therefor.

(B) Association and Cooperation

(1) The Insurer will at all times have the right, but not the duty, to effectively associate itself in the investigation, defense and settlement of any **Claim** that appears reasonably likely to involve this Policy, even if such **Claim** is groundless, false or fraudulent.

(2) The **Insureds** will, as a condition precedent to their rights under this Policy, cooperate with the Insurer and provide the Insurer with such information as the Insurer may reasonably require, and will do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery. The failure of an **Insured** to give the Insurer all cooperation and information as the Insurer may reasonably require will not impair the rights of any other cooperating **Insured Person** under this Policy.

(3) If any documents or information requested by or to be provided to the Insurer under this Policy are subject to the attorney-client privilege, work-product doctrine or any other legal privilege, the Insurer and the **Insureds** will cooperate in good faith to preserve the privileged status of any such document or information (including by signing a joint defense or similar agreement based upon common interest acceptable to the Insurer and the **Insureds**). If, after such efforts, the **Insureds** determine in good faith that providing such documents or information would cause a loss of privilege or would cause such documents or information to no longer be protected by work-product doctrine, the **Insureds** will cooperate in good faith with the Insurer to provide the Insurer with comparable documents or information while preserving the privileged status of (or applicability of work product doctrine to) any such documents or information. The foregoing sentence does not otherwise waive or limit the **Insureds'** obligations to cooperate reasonably with the Insurer and to do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery as provided in VI.(B)(2) above.

(C) Advancement and Allocation

(1) If, regarding any **Claim**, the **Insureds** covered therefor incur amounts of **Loss**:

(a) jointly with other parties who are not covered under this Policy for such **Claim**, including, without limitation, other persons or entities who are **Insureds** but not covered for such **Claim**, and/or

(b) that are covered under this Policy, but also incur other amounts not covered under this Policy,

then the **Insureds** and the Insurer agree to use their best efforts to fairly and reasonably allocate such amounts between covered **Loss** and uncovered amounts on the basis of the relative legal and financial exposures of the covered and non-covered parties, and/or to the covered **Loss** and non-covered amounts.

(2) Upon written request by any **Insured**, the Insurer will advance **Defense Costs** in excess of the applicable **Retention** amount, incurred in the defense of any **Claim** covered under this Policy. If the Insurer and the **Insureds** agree on the amount of such **Defense Costs** that constitute covered **Defense Costs**, the Insurer will advance such **Defense Costs** on a current basis, but no later than sixty (60) days after the Insurer receives itemized invoices for such **Defense Costs**; provided, however, that to the extent it is finally established that any such **Defense Costs** are not covered by this Policy, the **Insureds**, severally according to their interests, will repay such **Defense Costs** to the Insurer.

(3) If the Insurer and the **Insureds** cannot agree on the amount of fees, costs and expenses that constitute covered **Defense Costs**, then the Insurer will advance on a current basis **Defense Costs** that it

believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined. Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** will be applied retroactively to all **Defense Costs** incurred on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** will not apply to or create any presumption with respect to the allocation of **Loss** (other than **Defense Costs**) on account of such **Claim**.

VII. LIMITS OF LIABILITY AND PRIORITY OF PAYMENTS

(A) The **Limit of Liability** in ITEM 5 of the Declarations will be the maximum aggregate amount the Insurer will pay under this Policy for all **Loss** covered under this Policy. Each respective **Sublimit of Liability** enumerated in ITEM 6 of the Declarations, or by Endorsement to this Policy, will be the maximum aggregate amount the Insurer will pay under this Policy for all **Loss** covered under such **Sublimit of Liability**.

(B) Payment of **Loss** (including, without limitation, any **Defense Costs** or **Settlement Fees**) by the Insurer will reduce the **Limit of Liability** and each applicable **Sublimit of Liability**.

This is a Defense-Within-The-Limits Policy. **Defense Costs** will be subject to, part of, and not in addition to, the **Limit of Liability** and each applicable **Sublimit of Liability**.

(C) Unless otherwise specified by an endorsement to this Policy, all **Sublimits of Liability** will be part of, and not in addition to, the maximum aggregate **Limit of Liability** and payment under any **Sublimit of Liability** by the Insurer will reduce both the **Limit of Liability** and such **Sublimit of Liability**.

(D) The Insurer will be entitled to pay **Loss** as it becomes due and payable under this Policy without consideration of other future payment obligations.

(E) In the event that **Loss** covered under this Policy:

(1) which is not indemnified by any **Entity**, becomes due and payable concurrently with any other covered **Loss**, the Insurer will first pay, subject to the applicable **Limit of Liability**, such covered **Loss** which is not indemnified by any **Entity**;

(2) which is incurred by a **Sponsored Plan**, becomes due and payable concurrently with any other covered **Loss**, the Insurer will pay, subject to (E)(1), above, and the applicable **Limit of Liability**, such covered **Loss** which is incurred by the **Sponsored Plan**; and

(3) is paid first in favor of (E)(1) and then in favor of (E)(2), above, the insurer will then pay other covered **Loss** subject to the applicable **Limit of Liability**.

VIII. RETENTION AND INDEMNIFICATION

(A) The Insurer will only pay **Loss** in excess of the **Retention** applicable to each **Claim** as specified in ITEM 7 of the Declarations. **Loss** (including, without limitation, any **Defense Costs**) is applied against the **Retention**, which will be borne by the **Entity**, uninsured under this Policy, though where allowable by law, actual payment of a **Retention** may be made on behalf of the **Insured**. Any payment made on behalf of the **Insured** must contain a written reference to the identification number of the matter for which such payment is being made. No **Retention** will apply to **(1)** the first $25,000 incurred as **Electronic Discovery Defense Costs**, or **(2)** any **Settlement Fees**, **HIPAA Privacy Penalties**, **PPA Penalties**, **502(c) Penalties**, **IRS Tax Penalties** and **ACA Penalties**.

(B) If **Loss** arising from any **Claim** is covered in whole or in part under more than one Insuring Agreement, the applicable **Retention** will be applied separately to that portion of **Loss** covered by each Insuring Agreement and the sum of the **Retentions** so applied will constitute the **Retention** applicable to such **Claim**; provided, however, that the largest applicable **Retention** amount specified in ITEM 7 of the Declarations will be the maximum retention amount applicable to such **Claim**.

(C) The **Entity** agrees to indemnify the **Insured Persons**, including the advancement of **Defense Costs** incurred by **Insured Persons**, to the fullest extent permitted by law. No **Retention** will apply to **Loss** incurred

by any **Insured Person** that an **Entity** is not permitted by common or statutory law to indemnify, or is permitted or required to indemnify, but is not able to do so by reason of **Financial Insolvency**. Under no circumstances will any **Insured Person** be liable to pay the **Retention**.

(D) If a **Subsidiary** is unable to indemnify an **Insured Person** for any **Loss**, or to advance **Defense Costs** on their behalf, because of **Financial Insolvency**, then the **Named Entity** will reimburse and hold harmless the Insurer for the Insurer's payment or advancement of such **Loss** up to the amount of the applicable **Retention** that would have applied if such indemnification had been made, provided that no **Retention** will apply to **Loss** incurred by any **Insured Person** that the **Named Entity** is not permitted by common or statutory law to indemnify, or is permitted or required to indemnify, but is not able to do so by reason of **Financial Insolvency**.

(E) Notwithstanding paragraph **(C)** above, if an **Entity** refuses or fails within sixty (60) days of an **Insured Person's** request to advance, pay or indemnify such **Insured Person** for covered **Loss**, or if an **Entity** is unable to advance, pay or indemnify such **Insured Person** for covered **Loss** due to such **Entity's Financial Insolvency**, then:

(a) the Insurer will advance such amounts for covered **Loss** on behalf of such **Insured Person** without applying the applicable **Retention**. If the Insurer pays under this Policy any **Loss** incurred by an **Insured Person** for which an **Entity** is legally permitted or required and is financially able to advance, pay or indemnify, then the **Entity** will reimburse the Insurer for such amounts up to the applicable **Retention**, and such amounts will become due and payable as a direct obligation of the **Entity** to the Insurer. In no event will any such advancement, payment or indemnification by the Insurer relieve any **Entity** of any duty it may have to advance, pay or indemnify any **Insured Person**. Any such advancement, payment or indemnification by the Insurer within the applicable **Retention** will apply toward the exhaustion of the applicable **Limit of Liability**; and

(b) solely to the extent that any insurer pays such **Loss** pursuant to the terms, conditions or limitations of a **Side-A Excess DIC Policy**, the Insurer recognizes that such payments are applied against the applicable **Retention**; provided that, as a condition precedent to such application, the **Insured** provides the Insurer with written proof, to the Insurer's satisfaction, of such payment.

IX. SPOUSAL/DOMESTIC PARTNER LIABILITY, ESTATE AND LEGAL REPRESENTATIVES COVERAGE

(A) Coverage will apply to the **Domestic Partner** of an **Insured Person**, but only for a **Claim** made against such **Domestic Partner** for the **Wrongful Acts** of such **Insured Person**. No coverage will apply to any **Loss** directly resulting from any **Wrongful Act** of such **Domestic Partner**.

(B) In the event of the death, incapacity, insolvency or bankruptcy of an **Insured Person**, any **Claim** made against the estate, heirs, legal representatives, assigns, trusts or estate planning vehicles of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** made against such **Insured Person**. No coverage will apply to any **Loss** directly resulting from any **Wrongful Act** of such estate, heirs, legal representatives, assigns, trusts or estate planning vehicles.

X. REPRESENTATIONS AND SEVERABILITY OF THE APPLICATION

(A) The **Insureds** represent and acknowledge that the statements, representations and information contained in the **Application** are accurate and complete. This Policy is issued in reliance upon the **Application**, which will be construed as a separate **Application** for coverage by each **Insured**.

(B) In the event that any statements, representations or information contained in the **Application** (i) were not accurate and complete, and (ii) were either made with the intent to deceive or were material to the acceptance of the risk or the hazard assumed by the Insurer, no coverage will be afforded to:

(1) any **Insured Person** who had actual knowledge, as of the **Inception Date**, of the facts that were not accurately and completely disclosed, and any **Entity** to the extent that it indemnifies any such **Insured Person**, if, as of the **Inception Date**, a reasonable person would have believed such facts were likely to give rise to a **Claim**; or

(2) any **Entity**, if the chief executive officer, chief financial officer, in-house general counsel or head of benefits within the Human Resources Department (or any equivalent position thereof), of the **Named Entity** had actual knowledge, as of the **Inception Date**, of the facts that were not accurately and completely disclosed if, as of the **Inception Date**, a reasonable person would have believed such facts were likely to give rise to a **Claim**;

whether or not such **Insured Person** knew the **Application** contained such inaccurate and incomplete information. For purposes of Section **X.(B)**, (i) the actual knowledge possessed by any **Insured Person** will not be imputed to any other **Insured Person**, and (ii) only the actual knowledge possessed by the chief executive officer, chief financial officer, in-house general counsel or head of benefits within the Human Resources Department (or any equivalent position thereof), of the **Named Entity** will be imputed to the **Entity**.

(C) Under no circumstances will the Insurer be entitled to rescind or void this Policy in whole or in part.

XI. GENERAL CONDITIONS

(A) CANCELLATION

(1) The Insurer may cancel this Policy solely for non-payment of premium by sending not less than fifteen (15) days written notice to the **Named Entity.**

(2) Except as provided in Section **XI.(E)(2)**, the **Named Entity** may cancel this Policy by sending written notice of cancellation to the Insurer. Such notice will be effective upon receipt by the Insurer unless a later cancellation time is specified therein.

(3) If this Policy is cancelled pursuant to subsections **(1)** or **(2)** above, the unearned premium will be calculated on a pro rata basis, unless Section **XI.(E)(2)** applies, in which case the entire premium for this Policy will be deemed fully earned. Payment of any unearned premium will not be a condition precedent to the effectiveness of a cancellation. The Insurer will make payment of any unearned premium as soon as practicable.

(B) EXTENDED REPORTING PERIOD

(1) If the Insurer or the **Named Entity** cancels or non-renews this Policy for any reason other than non-payment of premium, then the **Insureds** will have the right, upon payment of the additional premium described in **(2)** and **(3)** below, to elect an extension of coverage granted by this Policy for the **Extended Reporting Period**, but only with respect to any **Claim** first made during the **Extended Reporting Period** for a **Wrongful Act** occurring before or during the **Policy Period**.

(2) The premium for the **Extended Reporting Period** will be the percentage, specified in ITEM 8(A) of the Declarations, of the sum of the annual premium plus the annualized amount of any additional premium charged by the Insurer during the **Policy Period**. Such premium will be deemed fully earned at the inception of the **Extended Reporting Period**.

(3) As a condition precedent to the right to purchase the **Extended Reporting Period**, the **Insureds** will send a written notice to elect the **Extended Reporting Period** to the Insurer together with the total premium therefore. The right to elect the **Extended Reporting Period** will end unless the Insurer receives such notice and premium within sixty (60) days of the effective date of such cancellation or non-renewal.

(4) There is no separate or additional limit of liability for the **Extended Reporting Period**.

(C) OTHER INSURANCE

If any amount payable under this Policy is insured under any other valid and collectible policy or policies (other than any personal umbrella excess liability insurance policy purchased by an **Insured Person**), then this Policy will apply only in excess of, and will not contribute with, the amount of any deductibles, retentions and limits of liability under such other policy or policies (including, but not limited to, any insurance under which there is a duty to defend, any errors and omissions policy, any cyber liability policy, any employment

practices liability insurance policy, or any insurance policy for pollution liability or environmental liability, including, without limitation, any general liability policy), whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's policy number.

(D) SUBROGATION AND WAIVER OF RECOURSE

(1) The Insurer will be subrogated to all of the **Insureds'** rights of recovery regarding any payment of **Loss** by the Insurer under this Policy, including any such right to indemnification from any **Entity**, other insurance carrier or other source. The **Insureds** will execute all papers required and do everything necessary to secure and preserve such rights, including the execution of any documents necessary to enable the Insurer to effectively bring suit directly or in the name of the **Insureds**, or otherwise pursue subrogation rights in the name of the **Insureds**, including any action against an **Entity** for indemnification. Notwithstanding the foregoing two sentences, the Insurer will not exercise its rights of subrogation against an **Insured Person** covered under this Policy, unless Section III.(A)(3) applies to such **Insured Person**.

(2) If any amounts paid by the Insurer under this Policy are recovered by the Insurer, the amount of such recovery, less the costs incurred by the Insurer in obtaining such recovery, will be reinstated to the **Limit of Liability** and any applicable **Sublimit of Liability**. The Insurer assumes no duty to seek a recovery of any amounts paid under this Policy.

(3) If the premium for this Policy was paid for by the **Sponsor Entity** or one or more **Insured Persons**, the Insurer waives its right of recourse under Section 410(b)(1) of **ERISA**.

(E) CHANGES IN EXPOSURE

(1) Acquisition/Creation of a Subsidiary

If, during or prior to the **Policy Period**, any **Sponsor Entity**:

(a) merges with another entity such that the **Sponsor Entity** is the surviving entity; or

(b) acquires or creates another entity that, as a result of such acquisition or creation, becomes a **Subsidiary**;

then such surviving entity or acquired or created **Subsidiary**, and any **Insured Persons** and **Sponsored Plans** thereof, will be **Insureds** under this Policy, subject to all other terms, conditions and limitations of this Policy, but only for **Claims** for **Wrongful Acts** occurring or allegedly occurring after the effective date of such transaction.

If the fair value of all **Plan** assets of any newly merged entity or acquired or created **Subsidiary** exceeds thirty percent (30%) of the fair value of all **Plan** assets of the **Entities**, other than the newly merged or acquired entity or **Subsidiary**, as reflected in their most recent consolidated audited financial statements as of the **Inception Date**, the **Named Entity** as a condition precedent to coverage with respect to such new **Insureds** will give the Insurer full details of the transaction in writing as soon as practicable but in no event later than ninety (90) days after the effective date of such transaction, together with such information as the Insurer may require, and will pay any additional premium so required by the Insurer. If the **Named Entity** fails to comply with such condition precedent, coverage otherwise afforded by this Section will terminate ninety (90) days after the effective date of such transaction.

Notwithstanding the foregoing, if any newly merged entity or acquired or created **Subsidiary** includes an employee stock ownership plan ("ESOP"), then, regardless of the amount of the fair value of the employee benefit plan assets of such plan, no coverage will be afforded to any such ESOP unless the Insurer, by specific endorsement to this Policy, agrees to afford such coverage. Any such coverage will be at the terms, conditions and limitations set forth in such endorsement. The **Insureds** agree to give the Insurer full details of such transaction in writing as soon as practicable, together with such information as the Insurer may require, and will pay any additional premium so required by the Insurer.

(2) Takeover of Named Entity

If, during the **Policy Period**:

(a) the **Named Entity** merges into or consolidates with another entity such that the **Named Entity** is not the surviving entity;

(b) the **Named Entity** sells all or substantially all of its assets to any other entity or person, or affiliated group of entities or persons; or

(c) another person or entity, group of persons or entities, or persons and entities acting in concert acquire **Management Control** of the **Named Entity**;

then coverage under this Policy will continue, subject to all other terms, conditions and limitations of this Policy, but only for **Claims** for **Wrongful Acts** that occurred or allegedly occurred prior to the effective date of such transaction. This Policy will not be cancelled and the entire premium for this Policy will be deemed fully earned as of the effective date of such transaction.

The **Named Entity** will give the Insurer written notice of such transaction as soon as practicable, but not later than ninety (90) days after the effective date of such transaction.

(3) Loss of Subsidiary Status

If, during or prior to the **Policy Period**, any entity ceases to be a **Subsidiary**, then coverage will continue, subject to all other terms, conditions and limitations of this Policy for such former **Subsidiary**, and any **Insured Persons**, **Sponsored Plans**, **Sponsored Plan Committees** or **Corporate Trustee Companies** thereof (and any **Insured Persons** of such **Sponsored Plans**, **Sponsored Plan Committees** or **Corporate Trustee Companies**), but only for **Claims** for **Wrongful Acts** occurring or allegedly occurring during the time that such entity was a **Subsidiary**.

(4) Loss of Sponsored Plan Status

Except as set forth in paragraph **(3)** above, if, during or prior to the **Policy Period**:

(a) any entity ceases to be a **Sponsored Plan** (other than due to termination), then coverage under this Policy will continue, subject to all other terms, conditions and limitations of this Policy, for such former **Sponsored Plan** and any **Insured Persons**, **Sponsored Plan Committees** or **Corporate Trustee Companies** thereof (and any **Insured Persons** of such **Sponsored Plan Committees** or **Corporate Trustee Companies**), but only for **Claims** for **Wrongful Acts** occurring or allegedly occurring prior to the date that any **Insured** ceases to be a fiduciary of any sold, spun-off or transferred **Sponsored Plan**.

(b) any **Sponsored Plan** is terminated, then coverage under this Policy will continue, subject to all other terms, conditions and limitations of this Policy, for such former **Sponsored Plan** and any **Insured Persons**, **Sponsored Plan Committees** or **Corporate Trustee Companies** thereof (and any **Insured Persons** of such **Sponsored Plan Committees** or **Corporate Trustee Companies**), but only for **Claims** for **Wrongful Acts** that occurred or allegedly occurred prior to the final date of distribution of the assets of such **Sponsored Plan**.

(5) Loss of Plan Status

Except as set forth in paragraphs **(3)** and **(4)** above, if, during or prior to the **Policy Period**:

(a) any entity ceases to be a **Plan** (other than due to termination), then coverage under this Policy will continue, subject to all other terms, conditions and limitations of this Policy, for any **Insureds** for the **Administration** of such **Plan**, but only for **Claims** for **Wrongful Acts** occurring or allegedly occurring prior to the date that any **Insured** ceases the **Administration** of any sold, spun-off or transferred **Plan**.

(b) any **Plan** is terminated, then coverage under this Policy will continue, subject to all other terms, conditions and limitations of this Policy, for any **Insureds** for the **Administration** of such **Plan**, but only for **Claims** for **Wrongful Acts** that occurred or allegedly occurred prior to the final date of distribution of the assets of such **Sponsored Plan**.

(6) Bankruptcy

(a) In the event of **Financial Insolvency**, the **Insureds** hereby:

(i) waive and release any automatic stay or injunction which may apply to this Policy, or the proceeds therefrom, in any corresponding bankruptcy proceeding or under any bankruptcy code or law; and

(ii) agree not to oppose or object to any efforts by the Insurer or any **Insureds** to obtain relief from any such stay or injunction.

(b) Bankruptcy or insolvency of any **Insured**, or any **Insured's** estate, will not relieve the Insurer of any of its obligations, nor deprive the Insurer of its rights or defenses, under this Policy.

(F) AUTHORIZATION OF NAMED ENTITY

The **Named Entity** will act on behalf of all **Insureds** with respect to all matters under this Policy (except the giving of notice to apply for any **Extended Reporting Period**), including, without limitation, the giving and receiving of notices regarding **Claims**, **Wrongful Acts**, cancellation, payment of premiums, receipt of any return premiums, and the negotiation, agreement to, and acceptance of any endorsements to this Policy.

(G) WORLDWIDE COVERAGE TERRITORY

(1) Worldwide Coverage

Coverage under this Policy applies to **Claims** made and **Wrongful Acts** committed or allegedly committed anywhere in the world.

(2) Currency

All amounts under this Policy are and will be expressed and payable in the currency of the United States of America. If a judgment is rendered, settlements are denominated or other elements of **Loss** are stated or incurred in a currency other than United States of America dollars, payment of covered **Loss** under this Policy (subject to the terms, conditions and limitations of this Policy) will be made either in such other currency (at the option of the Insurer and if agreeable to the **Named Entity**) or in United States of America dollars at the rate of exchange published in the *Wall Street Journal* on the date the Insurer's obligation to pay such **Loss** is established (or, if not published on that date, on the date of next publication). This clause is not intended to, and will not be interpreted to, narrow the scope of coverage otherwise provided under this Policy.

(3) Claims in Foreign Jurisdictions

(i) **Loss** incurred in a **Foreign Jurisdiction** by an **Entity**. Any **Loss** incurred in a **Foreign Jurisdiction** by an **Entity** may be deemed a **Loss** of the **Named Entity** payable by the Insurer to the **Named Entity** at the address listed in ITEM 1 of the Declarations. Any such payment by the Insurer to the **Named Entity** pursuant to this paragraph will fully discharge the Insurer's liability under this Policy for such **Loss** to such **Entity**.

(ii) **Loss** incurred in a **Foreign Jurisdiction** by an **Insured Person** which is not indemnified by an **Entity**. Any **Loss** incurred in a **Foreign Jurisdiction** by an **Insured Person** which is not indemnified by an **Entity** will be paid to such **Insured Person** in a jurisdiction mutually acceptable to such **Insured Person** and the Insurer, to the extent that doing so would not violate any applicable law, provided that the terms, conditions and limitations of this Policy pertaining to indemnification and reimbursement apply.

(H) ACTION AGAINST THE INSURER

(1) No action will be taken against the Insurer unless, as a condition precedent thereto, there will have been full compliance with all the terms, conditions and limitations of this Policy.

(2) No person or organization will have any right under this Policy to join the Insurer as a party to any **Claim** against any **Insured** nor will the Insurer be impleaded by any **Insured** or their legal representative in any such **Claim**.

(I) ASSIGNMENT

Assignment of interest under this Policy will not bind the Insurer without its prior consent as specified in a written endorsement issued by the Insurer to form a part of this Policy.

(J) HEADINGS

The headings and Table of Contents of this Policy are intended for reference only and will not be part of the terms, conditions and limitations of coverage.

(K) REFERENCES TO LAWS

(1) Wherever this Policy mentions any law, including, without limitation, any statute, act or code of the United States of America, such mention will be deemed to include all amendments of, and all rules or regulations promulgated under, such law.

(2) Wherever this Policy mentions any law or laws, including, without limitation, any statute, act or code of the United States of America, and such mention is followed by the phrase “or any similar law”, such phrase will be deemed to include all similar laws of any jurisdiction throughout the world, including, without limitation, statutes and any rules or regulations promulgated thereunder as well as common law.

(L) ENTIRE AGREEMENT AND CHANGES

This Policy, including the Declarations, **Application** and any written endorsements attached hereto, constitute the entire agreement between the **Insureds** and the Insurer relating to this insurance. This Policy will not be waived, changed or modified except in a written endorsement issued by the Insurer to form a part of this Policy.

(M) MINIMUM STANDARDS

In the event that there is an inconsistency between the terms, conditions and limitations of a state amendatory endorsement attached to this Policy and any other term, condition or limitation of this Policy (including via any other endorsements hereto), it is understood and agreed that, where permitted by law, the Insurer will apply those terms, conditions and limitations of either the state amendatory endorsement or the Policy which are more favorable to the **Insured**.

XII. DEFINITIONS

The following terms appearing in bold type, whether used in the singular or plural, will have the meanings specified below:

- **"502(c) Penalties”** means civil monetary penalties, other than **PPA Penalties**, imposed upon an **Insured** for failure to provide required **ERISA** plan documents as a fiduciary under Section 502(c) of **ERISA**.

- **“502(i) and 502(l) Fines & Penalties”** means the five percent (5%) or less, and the twenty percent (20%) or less, civil monetary penalties imposed upon an **Insured** acting as a fiduciary under Section 502(i) and Section 502(l) of **ERISA** with respect to covered settlements or judgments.

- **"ACA Penalties"** means civil monetary penalties imposed upon an **Insured** for inadvertent violation of the Patient Protection and Affordable Care Act.

- **"Administration"** means, solely with respect to a **Plan**:

  (1) handling **Insured Persons'**, participants' or beneficiaries' records;

  (2) counseling or providing interpretations to **Insured Persons**, participants or beneficiaries;

  (3) determining or calculating **Insured Persons'**, participants' or beneficiaries' benefits (including, but not limited to, the alleged failure to make timely determinations of eligibility for benefits);

  (4) preparing, distributing or filing required notices or documents (including, but not limited to, **COBRA** notices);

  (5) effecting enrollment of **Insured Persons**, participants or beneficiaries; or

  (6) terminating or cancelling **Insured Persons'**, participants' or beneficiaries' benefits.

- **"Application"** means the application for this Policy, including any written materials or information submitted therewith or made available to the Insurer by the **Insured** during the underwriting process. **Application** will include any publicly available materials or information filed by or on behalf of an **Entity** or **Plan** with any federal, state, local or foreign regulatory agency within the one year preceding the **Inception Date**. All such applications, materials and information are the basis of, and will be deemed incorporated into and constitute a part of, this Policy.

- **"Civil Fines & Penalties"** means **502(c) Penalties**, **502(i) and 502(l) Fines & Penalties**, **ACA Penalties**, **HIPAA Privacy Penalties**, **IRS Tax Penalties**, **PPA Penalties**, **Settlement Fees** and **UK Fines and Penalties**.

- **"Claim"** means:

  (1) a written demand for monetary damages or for other non-monetary (including injunctive) relief (other than an initial application for benefits), including, but not limited to, **(a)** a demand to toll or waive the running of the statute of limitations and **(b)** a demand to engage in arbitration, mediation or any other alternative dispute resolution, which is deemed to be first made when an **Insured** receives such demand;

  (2) a civil proceeding, including any appeal therefrom, for civil monetary damages or other civil non-monetary (including injunctive) relief, which is deemed to be first made when an **Insured** receives service of a complaint or similar pleading;

  (3) a criminal proceeding, including any appeal therefrom, which is deemed to be first made when an **Insured** is arrested, made the subject of an indictment that has been returned by a grand jury or has been served with an accusation, information, complaint, summons or similar charging document filed in a criminal court;

  (4) a formal regulatory or formal administrative proceeding (other than an investigation), including any appeal therefrom, which is deemed to be first made when an **Insured** receives service of a complaint or similar pleading, a filed notice of charges or, with respect to a foreign proceeding, any similar document; or

  (5) a fact-finding investigation by the **DOL**, the U.S. Pension Benefit Guaranty Corporation or any similar governmental authority located anywhere in the world, which is deemed to be first made when an **Insured** receives written notice thereof, provided that such **Claim** is only covered under Insuring Agreement (A);

  against an **Insured**, subject to following subparagraphs.

  Claim also means:

  (6) a **Securities Investigation**, provided that such **Claim** is only covered under Insuring Agreement (A);

or

(7) a **Settlement Program Notice**, provided that such **Claim** is only covered under Insuring Agreement (C).

- **"COBRA"** means Consolidated Omnibus Budget Reconciliation Act.

- **"Code"** means the Internal Revenue Code of 1986.

- **"Corporate Trustee Company"** means any corporation formed by the **Entity** and operating outside of the United States of America, which is duly appointed to act as a trustee of any **Sponsored Plan**.

- **"Debtor in Possession"** means a "debtor in possession" as such term is defined in Chapter 11 of the U.S. Bankruptcy Code or the equivalent in any **Foreign Jurisdiction**.

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

  (1) reasonable fees, costs and expenses incurred by the **Insureds**:

  (a) in defending or appealing a **Claim**, including, but not limited to, expert fees and the costs of appeal, attachment or similar bonds, provided that the Insurer will have no obligation to apply for or furnish such bonds; and

  (b) at the Insurer's request to assist the Insurer in investigating a **Claim**;

  (2) **Electronic Discovery Defense Costs**; and

  (3) **Extradition Costs**.

  Defense Costs will not include (i) any salaries, wages (including overtime wages), remuneration, overhead, operating expenses, benefits or benefit expenses associated with any **Insured** or **Employee**, (ii) any fees, costs or expenses incurred by an **Insured** prior to the date on which the **Claim** is first made against the **Insured** or (iii) any fees, costs or expenses incurred by or on behalf of a party which is not a covered **Insured**.

- **"DOJ"** means the United States Department of Justice.

- **"DOL"** means the United States Department of Labor.

- **"Domestic Partner"** means any natural person qualifying as a legal spouse, domestic partner or party to a civil union under the provisions of any applicable federal, state or local law, or under the provisions of any human resource policy of the **Sponsor Entity**.

- **"Electronic Discovery"** means the review, collection, development, storage, organization, cataloguing, preservation and production of electronically stored information.

- **"Electronic Discovery Defense Costs"** means the reasonable costs incurred by the **Insured** to hire a consulting firm to perform the following services:

  (1) assisting the **Insured** with managing and minimizing the internal and external costs associated with **Electronic Discovery**;

  (2) assisting the **Insured** in developing or formulating an **Electronic Discovery** strategy which includes interviewing qualified and cost effective **Electronic Discovery** vendors; and

  (3) serving as project manager, advisor and/or consultant to the **Insured**, defense counsel to the **Insured** and the Insurer in executing and monitoring the **Electronic Discovery** strategy.

- **"Employee"** means any natural person who was, is or becomes:

(1) an employee of an **Entity** including any full time, part time, seasonal, temporary, leased, or loaned employee; or

(2) a volunteer or intern with an **Entity**.

Employee will not include any independent contractor.

- **"Employee Stock Ownership Plan"** means any plan that was created or acquired to invest primarily in employer securities or a plan that invests more than 10% of its assets in the securities of **Sponsor Entities.**

- **"Entity"** means any:

  (1) **Sponsor Entity**;

  (2) **Sponsored Plan**;

  (3) **Sponsored Plan Committee**; or

  (4) **Corporate Trustee Company**.

  Entity does not mean any **Third-Party Service Provider**.

- **"ERISA"** means the Employee Retirement Income Security Act of 1974 (including, without limitation, the amendments related to COBRA, HIPAA, The Newborns' and Mothers' Health Protection Act of 1996, The Mental Health Parity Act of 1996, The Women's Health and Cancer Rights Act of 1998, The Pension Protection Act of 2006 and the Affordable Care Act).

- "**ERISA Laws**" means **ERISA** or any similar law, including, without limitation, the English Pension Scheme Act of 1993 and the English Pensions Act of 1995. **ERISA Laws** includes the privacy regulations under **HIPAA**.

- **"Extended Reporting Period"** means the electable period of time set forth in ITEM 8(B) of the Declarations following the effective date of any cancellation or nonrenewal of this Policy.

- **"Extradition"** means any formal process (including without limitation an extradition proceeding pursuant to the U.K. Extradition Act of 2003 or the equivalent in any other jurisdiction) by which an **Insured Person** located in any country is or is sought to be surrendered to any other country for trial or otherwise to answer any criminal accusation, including: **(1)** the appeal of any order or other grant of extradition of such **Insured Person** and **(2)** the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**.

- **"Extradition Costs"** means reasonable fees and expenses directly resulting from a **Claim** in which an **Insured Person** opposes, challenges, resists or defends against any request for the **Extradition** of such **Insured Person**.

- **"Financial Insolvency"** means the status of a **Sponsor Entity** as a result of:

  (1) the court appointment, pursuant to federal or state law, of any conservator, liquidator, receiver, rehabilitator, trustee or similar official to control, supervise, manage or liquidate such **Sponsor Entity**; or

  (2) such **Sponsor Entity** becoming a **Debtor in Possession**.

- **"Foreign Jurisdiction"** means any jurisdiction, other than the United States of America or any of its territories or possessions.

- **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996.

- **"HIPAA Privacy Penalties"** means civil monetary penalties imposed upon an **Insured** for such **Insured's**

violation of the privacy provisions of **HIPAA**.

- **"Insured(s)"** means any:

  (1) **Entity**; or

  (2) **Insured Person**;

- **"Insured Person"** means any natural person who was, is, or becomes:

  (1) a duly elected or appointed director, officer, governor, trustee or **Manager** of an **Entity**;

  (2) a member of a **Sponsored Plan Committee**;

  (3) an **Employee** in their capacity as legal counsel to an **Entity**;

  (4) an executive of an **Entity** created outside the U.S. to the extent that such executive holds a position equivalent to those described in **(1)**, **(2)** or **(3)** above;

  (5) **Employee**;

  (6) a former duly elected or appointed director, officer, governor, trustee or **Manager** of an **Entity**, or **Employee** who had formerly served in a capacity as legal counsel to an **Entity**, serving in a consulting or an advisory capacity to any **Sponsored Plan**; provided that such person is indemnified by the **Entity** to the fullest extent permitted by statutory or common law.

  Insured Persons are, subject to all other terms, conditions, and limitations of this Policy, only covered for **Wrongful Acts** committed or allegedly committed **(a)** in their capacity as a fiduciary, trustee or settlor of a **Sponsored Plan** or **(b)** in their **Administration** of a **Plan**.

  Insured Person will not include any individual in their capacity as an employee of a third party, including, without limitation, a **Third-Party Service Provider**.

- **"Interrelated Wrongful Acts"** means all **Wrongful Acts** that are based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related facts, circumstances, situations, transactions, events or causes, or series of related facts, circumstances, situations, transactions, events or causes, whether such **Wrongful Acts** are alleged in a single or multiple **Claim(s)**.

- **"IRS Tax Penalties"** mean the monetary tax penalties imposed upon an **Insured** under Section 4975(a) of the **Code** directly resulting from a final non-appealable judgment or other final non-appealable adjudication establishing that such **Insured** participated inadvertently in a **Prohibited Transaction**.

- **"Loss"** means the following amounts any **Insured** is legally obligated or required to pay as a result of any **Claim** insured by this Policy:

  (1) settlement amounts and judgments, including costs awarded pursuant to covered judgments and appeals and pre-judgment and post-judgment interest on that portion of a covered judgment;

  (2) compensatory damages;

  (3) punitive or exemplary damages, or the multiple portion of any multiplied damage award, where insurable pursuant to applicable law;

  (4) **Defense Costs**;

  (5) reasonable fees and expenses of an independent fiduciary if such fiduciary is retained to review a proposed settlement of a covered **Claim** (including reasonable fees and expenses of any law firm hired by such independent fiduciary to facilitate the review of such proposed settlement of a covered

Claim);

(6) claimant's attorney's fees awarded by a court pursuant to Section 502(g) of **ERISA** against an **Insured**;

(7) **Civil Fines & Penalties**, where permissible by law and otherwise covered under this Policy; and

(8) **Settlement Fees**, with respect to Insuring Agreement (C) only.

Loss (other than **Defense Costs**) will not include:

(a) fines, penalties or taxes, other than pursuant to subsections **(3)** and **(7)** above;

(b) amounts for which an **Insured** is legally absolved from payment;

(c) costs incurred by an **Insured** to comply with any order for non-monetary (including injunctive or other equitable) relief, any agreement to provide such relief or any regulatory or administrative directive;

(d) amounts incurred to test for, abate, monitor, clean up, remove, contain, treat, assess, detoxify or neutralize **Pollutants**, nuclear material or nuclear waste;

(e) wages, commissions and tips;

(f) benefits due or to become due under the terms of a **Plan**, or benefits that would be due under any **Plan** if such **Plan** complied with all applicable law, amounts constituting any contribution, or that portion of any settlement or award in an amount equal to, or substantially equal to, such amount constituting such benefits or such contribution to fund or that is owed to any **Plan**, including loss resulting from the payment of plaintiff attorneys' fees based upon a percentage of such benefits or payable from a common fund established to pay such benefits; provided, however, that this sub-paragraph **(f)** will not apply to the extent that:

(i) recovery of such benefits or contributions is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Insured Person**; or

(ii) a **Claim** made against any **Insured** alleges a loss to a **Plan** and/or to the accounts of such **Plan's** participants by reason of a change in value of the investments held by such **Plan**, including, but not limited to the securities of the **Sponsor Entity**, regardless of whether the amounts sought in such **Claim** are characterized by plaintiffs or held by a court to be benefits due or damages for breach of fiduciary duty; or

(g) amounts determined to be uninsurable under the law pursuant to which this Policy will be construed; provided, however, that the insurability of that which is otherwise included in this definition of **Loss** will be determined under the law of the applicable jurisdiction most favorable to such insurability, including, without limitation, the jurisdiction in which the **Named Entity**, the **Insured Person**, the Insurer or such **Claim** is located.

- **"Managed Care Services"** means a **Third-Party Service Provider's** administration or management of a health care, pharmaceutical, vision or dental **Sponsored Plan** utilizing cost control mechanisms, including, but not limited to, utilization review, case management, disease management, pharmacy management, the use of a preferred provider medical, vision or dental network, or a health maintenance organization. **Managed Care Services** will not include **(1)** any services provided by a **Self-Administered Plan** and **(2)** any acts, errors or omissions in the rendering of or failure to render **Medical Services** by an **Insured**.

- **"Managed Care Wrongful Act"** means the actual or alleged breach or violation of the responsibilities, obligations or duties imposed upon **Insureds**, in their capacity as fiduciaries of any **Sponsored Plan**, by **ERISA** with respect to:

(1) an **Insured's** improper or negligent selection of a **Third-Party Service Provider** of **Managed Care Services**; or

(2) a **Third-Party Service Provider** of **Managed Care Services'** denial or delay of any benefit due under a health care, pharmaceutical, vision or dental **Sponsored Plan**, for which the **Insured** is legally responsible.

Managed Care Wrongful Act does not include any **Insured's** administration or management of a health care, pharmaceutical, vision or dental **Sponsored Plan** utilizing cost control mechanisms, including, but not limited to, utilization review, case management, disease management, pharmacy management, the use of a preferred provider medical, vision or dental network, or a health maintenance organization.

- **"Management Control"** means:

  (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors, members of the management board, members of the board of governors, management committee or advisory committee of any corporation or limited liability company (including any joint venture structured as a corporation or limited liability company), or any functionally equivalent position; or

  (2) having the right, pursuant to a written contract or the by-laws, charter, operating agreement or similar documents of any corporation or limited liability company (including any joint venture structured as a corporation or limited liability company), to elect, appoint or designate a majority of the board of directors, members of the management board, members of the board of governors, management committee or advisory committee of any corporation or limited liability company (including any joint venture structured as a corporation or limited liability company), or any functionally equivalent position.

- "**Manager**" means, with respect to any **Sponsor Entity** that is a limited liability company (including any joint venture structured as a limited liability company), a natural person who was, is, or becomes a duly elected, appointed or designated manager, member of the management board, member of the board of governors, member of the management committee or member of the advisory committee, or any functionally equivalent position, of such **Sponsor Entity**.

- "**Medical Services**" means health care, medical care or other treatment provided to any individual, including **(1)** medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing or other professional health care, **(2)** the use, prescription, furnishing or dispensing of medications, drugs, blood, blood products or medical, surgical, dental or psychiatric supplies, equipment or appliances in connection with such care, **(3)** the furnishing of food or beverages in connection with such care, counseling or other social services in connection with such care and **(4)** the handling of, or the performance of, post-mortem examinations of, human bodies.

- **"Named Entity"** means the entity named in ITEM 1 of the Declarations**.**

- **"Plan"** means:

  (1) any **Sponsored Plan**; and

  (2) any government-mandated insurance program for unemployment, social security or disability benefits for **Employees**.

- **"Policy Period"** means the period from the **Inception Date** to the **Expiration Date** set forth in ITEM 3 of the Declarations or any earlier cancellation date, in accordance with Section **XI.**

- **"Pollutants"** means any solid, liquid, gaseous, biological or thermal irritant, nuisance or contaminant, including, without limitation, smoke, vapor, soot, dust, fibers, mold, spores, fungi, germs, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil product, radiation, asbestos or asbestos-containing product, waste, other air emissions, waste water, infectious or medical waste, and any electric, magnetic or electromagnetic field of any frequency. Waste includes, without limitation, material to be recycled, reconditioned or reclaimed. **Pollutants** include any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on any list of hazardous substances issued by any federal agency (including, nonexclusively, the United States Environmental Protection Agency) or any state,

county, municipality or locality or counterpart thereof, or any foreign equivalent thereof, including, but not limited to, nuclear material or nuclear waste.

- **"PPA Penalties"** mean civil monetary penalties imposed upon an **Insured** for violation of the Pension Protection Act of 2006 (PPA).

- **"Prohibited Transaction"** means a transaction as defined under Section 4975(c) of the **Code**.

- **"SEC"** means the United States Securities and Exchange Commission.

- **"Securities Enforcement Entity"** means any federal, state, local or foreign law enforcement authority or other governmental regulatory authority (including the **DOJ**, the **SEC** and any attorney general), which regulates securities or commodities, or the enforcement unit of any securities or commodities exchange or similar self-regulatory entity. **Securities Enforcement Entity** will not include the **DOL**, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority anywhere in the world, including, but not limited to, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or by the United Kingdom Occupational Pensions Regulatory Authority or any successor thereto.

- "**Securities Investigation**" means an investigation of an **Insured Person**, solely in their capacity as a fiduciary of a **Sponsored Plan**, by a **Securities Enforcement Entity**, which is deemed to be first made when such **Insured Person** receives or is served with a written document identifying such **Insured Person** by name as a target of such **Securities Enforcement Entity**, including a formal order of investigation, a Wells Notice from the **SEC** indicating that it may commence an enforcement action against such **Insured Person**, a target letter or similar document.

- **"Self-Administered Plan"** means any **Plan** administered or managed by an **Insured** in which the employer or plan sponsor (as defined in **ERISA**) retains the right to make final benefit determinations.

- **"Settlement Fees"** mean any fees, fines, penalties or sanctions imposed by law under a **Settlement Program** (other than costs of correction) that any **Insured** becomes legally obligated to pay as a result of a **Settlement Program Wrongful Act**.

  Settlement Fees will not include **(1)** any salaries, wages (including overtime wages), remuneration, overhead, operating expenses, benefits or benefit expenses associated with any **Insured**, **(2)** any **Defense Costs**, **(3)** any fees, fines, penalties or sanctions incurred by an **Insured** prior to the date on which the **Settlement Program Notice** is first provided in writing to the Insurer, or **(4)** any fees, fines, penalties or sanctions incurred by or on behalf of a party which is not a covered **Insured**.

- **"Settlement Program"** means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service, the **DOL**, the Pension Benefit Guarantee Corporation, or any similar domestic or foreign governmental authority (including, but not limited to, the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Delinquent Filer Voluntary Compliance Program, the Tax Sheltered Annuity Voluntary Correction Program, the Voluntary Fiduciary Correction Program, the Premium Compliance Evaluation Program, and the Participant Notice Voluntary Correction Program) that is entered into by an **Insured**.

- **"Settlement Program Notice"** means a prior written notice to the Insurer by any **Insured** of its intent to enter into a **Settlement Program** that includes a detailed description of the **Settlement Program Wrongful Act** for which notice will be given under the **Settlement Program**.

- **"Settlement Program Wrongful Act"** means any inadvertent non-compliance by a **Sponsored Plan** in accordance with any **Settlement Program**.

- **"Side-A Excess DIC Policy"** means an insurance policy that provides a limit of liability written specifically as Side-A excess difference-in-conditions coverage excess of this Policy's **Limit of Liability**.

- **"Sponsor Entity"** means:

(1) the **Named Entity**; and

(2) any **Subsidiary**;

Sponsor Entity will include any such entity as a **Debtor in Possession**.

- **"Sponsored Plan"** means any past, present, or future:

  (1) employee benefit plan, including any employee welfare benefit plan or employee pension benefit plan, as defined in **ERISA**, established or located anywhere in the world, sponsored solely by a **Sponsor Entity**, or jointly by a **Sponsor Entity** and a labor organization, solely for the benefit of **Insured Persons** of the **Sponsor Entity**;

  (2) employee benefit plan or program, including an excess benefit plan, not subject to **ERISA**, established or located anywhere in the world, sponsored solely by a **Sponsor Entity** solely for the benefit of **Insured Persons** of the **Sponsor Entity**;

  (3) group or group type insurance program, including a Health Savings Account (HSA) program, those that meet the safe harbor conditions set forth in 29.C.F.R. 2510.3-1(j)(1), or any other benefit plan that is not subject to Title 1 of **ERISA**, including any fringe benefit or excess benefit plan, that was, is now or becomes sponsored solely by the **Sponsor Entity** solely for the benefit of **Insured Persons** of the **Sponsor Entity**;

  (4) plan or program otherwise described in paragraphs **(1), (2)** or **(3)** above while such plan or program is being actively developed, formed or proposed by the **Sponsor Entity** prior to the formal creation of such plan or program; and

  (5) other plan, fund or program specifically included as a **Sponsored Plan** in a written endorsement issued by the Insurer to form a part of this Policy.

  However, a **Sponsored Plan** will not include any:

  (a) **Employee Stock Ownership Plan**;

  (b) multiemployer plan, its contributing employer(s) or any fiduciary, trustee, settlor or administrator of a multiemployer plan; or

  (c) any government-mandated insurance program for unemployment, social security or disability benefits for **Employees**.

- **"Sponsored Plan Committee"** means any employee benefit committee, including, but not limited to, any plan investment or administration committee, established by a **Sponsor Entity**, but solely in its capacity as a fiduciary of a **Sponsored Plan**, which is comprised entirely of **Insured Persons**.

- **"Subsidiary"** means any:

  (1) for-profit entity in which, and so long as, the **Named Entity**, directly or indirectly through one or more **Subsidiaries**, has **Management Control**; or

  (2) not-for-profit entity as described in Section 501(c) of the **Code** in which, and so long as, the **Named Entity** has **Management Control**.

- "**Third-Party Service Provider**" means a third party selected by an **Insured** for the purpose of providing services, including, without limitation, **Managed Care Services.**

  Third-Party Service Providers are not **Insureds**.

- **"UK Fines and Penalties"** means the civil monetary fines and penalties assessed against an **Insured** by:

(1) the United Kingdom's Pension Ombudsman as appointed by the United Kingdom Secretary of State for Work and Pensions or any successor thereto, by the United Kingdom Occupational Pensions Regulatory Authority, or the Pensions Regulator or any successor thereto, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, the English Pensions Act 2004 or the English Pensions Act of 2008; or

(2) the Republic of Ireland's Pensions Authority or Pensions Ombudsman.

provided, however, 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 Policy.

- **"Wrongful Act"** means any actual or alleged:

  (1) breach or violation of the responsibilities, obligations or duties imposed upon fiduciaries of any **Sponsored Plan** by **ERISA** with respect to a **Sponsored Plan**, including, but not limited to, the actual or alleged improper selection of or inadequate monitoring of **Third-Party Service Providers** (other than a **Managed Care Services Provider**), committed, attempted or allegedly committed or attempted by an **Insured** in their capacity as a fiduciary of any **Sponsored Plan**; or

  (2) negligent act, error or omission in the **Administration** of any **Plan** committed, attempted or allegedly committed or attempted by an **Insured**.

  Wrongful Act also means any actual or alleged:

  (3) matter, other than as set forth in subsections **(1)** and **(2)** above, claimed against an **Insured** solely due to such **Insured's** service as a fiduciary of, or in the **Administration** of, any **Sponsored Plan**;

  (4) negligent act, error or omission committed, attempted or allegedly committed or attempted by an **Insured** solely in such **Insured's** settlor capacity with respect to creating, funding, terminating or amending a **Sponsored Plan**;

  (5) **Managed Care Wrongful Act**, but such **Wrongful Act** is only covered under Insuring Agreement (B); or

  (6) **Settlement Program Wrongful Act,** but such **Wrongful Act** is only covered under Insuring Agreement (C).

All other bolded and capitalized terms are defined as set forth in the Declarations.